राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

सोमवार, 08 अगस्त, 2016 / 17 श्रावण, 1938

हिमाचल प्रदेश सरकार

लोक निर्माण विभाग

अधिसूचना

शिमला–2, 5 अगस्त, 2016

संख्याःपी.बी.डब्लयू(बी)एफ(5)39 / 2015.––यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामत गांव शरोंथा, उप–तहसील टिक्कर, जिला शिमला, हिमाचल प्रदेश में मढ़ारली टिक्कर सड़क के निर्माण हेतु भूमि अर्जित अपेक्षित है,

अतएव एतद् द्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है, उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को, जो इससे सम्बन्धित हो सकते हैं, की जानकारी के लिए भूमि अर्जन, पुनर्वास और पुर्नर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता अधिकार अधिनियम, 2013 (2013 का 30) की धारा–11 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने और सर्वेक्षण करने तथा उस धारा द्वारा अपेक्षित अथवा अनुमतः अन्य सभी कार्यो को करने के लिए सहर्ष प्राधिकार देते हैं।

4. कोई भी हितबद्ध व्यक्ति जिसे उक्त परिक्षेत्र में कथित भूमि के अर्जन पर कोई आपत्ति हो तो वह इस अधिसूचना के प्रकाशित होने के 30 दिनों की अवधि के भीतर भू–अर्जन समाहर्ता, लोक निर्माण विभाग (शि0क्षे0), विन्टर फिल्ड, शिमला के समक्ष लिखित रूप से आपत्ति दायर कर सकता हैं !

विवरणी

जिला	उप–तहसील	गांव	खसरा नम्बर	क्षेत्र (है0)
शिमला	टिक्कर	शरोंथा	899	0–26–52
		कुल जोड़ . .	**किता–1**	**0–26–52**

आदेश द्वारा,
हस्ताक्षरित/–
अति0 मुख्य सचिव।

————————

लोक निर्माण विभाग

अधिसूचना

शिमला–2, 3 अगस्त, 2016

संख्याःपी.बी.डब्लयू(बी)एफ (5)53/2016.––यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामत गांव ढावण/237, तहसील बल्ह, जिला मण्डी में स्यांह ढावण भ्यारटा सडक के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद् द्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है, उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को, जो इससे सम्बन्धित हो सकते हैं, की जानकारी के लिए भूमि अर्जन, पुनर्वास और पुर्नर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता अधिकार अधिनियम, 2013 (2013 का 30) की धारा–11 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश

करने और सर्वेक्षण करने तथा उस धारा द्वारा अपेक्षित अथवा अनुमतः अन्य सभी कार्यो को करने के लिए सहर्ष प्राधिकार देते हैं।

4. कोई भी हितबद्व व्यक्ति जिसे उक्त परिक्षेत्र में कथित भूमि के अर्जन पर कोई आपत्ति हो तो वह इस अधिसूचना के प्रकाशित होने के साठ (60) दिन की अवधि के भीतर भू–अर्जन समाहर्ता, लोक निर्माण विभाग, मण्डी, हिमाचल प्रदेश के समक्ष लिखित आपत्तिदायर कर सकता हैं !

विवरणी

जिला	तहसील	गांव	खसरा नम्बर	क्षेत्र बीघा–विस्वा में
मण्डी	बल्ह	ढावण / 237	1109 / 1	0–11–6
			1108 / 1	0–1–18
		कुल जोड़. .	**किता–2**	**0–13–4**

आदेश द्वारा,
हस्ताक्षरित / –
अति0 मुख्य सचिव।

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PUBLIC WORKS DEPARTMENT

NOTIFICATION

Shimla-171002, the 28th July, 2016

No. PBW(B)F(7)3/2009-I.—In continuation to this department notification of even number dated 18th May, 2016, the Governor, Himachal Pradesh is pleased to declare the following mentioned roads as Major District Roads (MDRs):—

Sr. No.	Name of road	District	Length (Kms)	MDR No.
61	Chamba Khajjiar Road	Chamba	19	70
62	Chamba Sahoo Road	Chamba	21	71

Accordingly the total length of Major District Roads in the State will be 2437.730 kms.

By order,
Sd/-
Addl. Chief Secretary.

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 28th *July,* 2016

No: Shram (A) 6-2/2016 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr. No.	Case No:	Title of the Case	Date of Award
1.	25/2013	Sh. Hem Raj V/s The Geep Battries (I) Ltd. Juddi Kalan, District Solan H.P.	2-A
2.	27/2013	Sh. Sudesh Kumar V/s -do-	2-A
3.	19/2014	Ms. Uma Devi V/s The Executive Engineer, IPH Division Pooh, District Kinnaur, H.P.	10
4.	63/2013	Ms. Sanam Devi V/S -do-	10
5.	05/2013	Ms. Rakesh Kumari V/S -do-	10
6.	72/2013	Norjang Yum V/S -do-	10
7.	33/2009	Sh. Munish Kumar V/S M/S Himachal Futuristic Communication Ltd. Chambaghat, Solan & Anr.	10
8.	32/2009	Sh. Manjeet Singh V/s -do-	10
9.	92/2014	Sh. Balbir Singh V/S The Exectutive Engineer, HPPWD, Kumarsain, District Shimla, H.P. & Ors.	2-A
10.	06/2012	Sh. Vinod Kumar V/S M/S Numeric Power System Ltd. Parwanoo District Solan H.P.	2-A
11.	74/2014	Workers Union V/S M/S Mahale Filter System Ltd.	10
12.	89/2014	Sh. Lal Ji V/s Bhojia Dental College & Hospital, Baddi District Solan, H.P.	2-A
13.	90/2014	Sh. Sarwan Kumar V/s -do-	2-A
14.	45/2015	Sh. Ravinder Kumar V/s M/S Tapan Multiventure Shoghi, Shimla.	10

By order,
Sd/-
Pr. Secretary (Lab. & Emp.).

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT NALAGARH

App. No. : 25 of 2013

Instituted on. : 21.5.2013

Decided on : 24.6.2016

Hem Raj C/o Shri A.K Sharma, R/o Sai Road, Baddi, HP ...*Petitioner.*

Vs.

The Geep Battries (1) Ltd., Plot no. 66 and 67 HPSIDC, Juddi Kalan, District Solan, HP. ..*Respondent.*

Petition under section 2-A of the Industrial Disputes Act, 1947.

For petitioner : Shri A.K Sharma, AR.

For respondent : Shri Rajeev Sharma, Advocate.

ORDER/AWARD

In nutshell the case of the petitioner is that he was employed as an operator on 15.2.2006 by the respondent and was drawing last wages of ₹ 11,800/- per month. It is further stated that the petitioner had completed more than 240 days continuously before this termination and that his services were terminated on 23.10.2009 without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) as neither any notice was served upon him nor he was paid compensation. It is also stated that the petitioner had served a demand notice dated 24.10.2009 to the respondent and copy of which was sent to the respondent but the conciliation officer sent his failure report on 3.9.2010. Against this back-drop a prayer has been made for his reinstatement along-with all consequential service benefits including back-wages.

2. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, that the petitioner has not come to this Court with clean hands and the petitioner is gainfully employed. On merits, it has been admitted that the petitioner joined the respondent as an operator *w.e.f.* 15.2.2006 but it is denied that the petitioner was drawing ₹ 11,800/- per month at the time of his abandoning the job. It is admitted that the petitioner had completed 240 days in one year. It is submitted that when a senior officer of the company visited the factory, he found that three persons including the petitioner were sitting idle during duty hours and thereafter a show cause notice was issued to the petitioner but he instead of filing the reply to show cause notice, abandoned the job. The services of the petitioner had never been terminated by the respondent, who himself had abandoned his job. The respondent prayed for the dismissal of the claim petition.

3. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 17.1.2014.

1. Whether the termination of the petitioner w.e.f. 23.10.2009 is illegal and unjustified as alleged? ...*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ... *OPP.*

3. Whether this petition is not maintainable as alleged? ...*OPR.*

4. Relief.

4. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

5. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled for reinstatement in service with seniority and continuity but without back-wages.
Issue no.3	No.
Relief.	Petition allowed per operative part of order/award.

Reasons for findings

Issues no. 1.

6. The AR for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that before terminating his services no enquiry had been conducted against him.

7. On the other hand, Ld. counsel for the respondent contended that the services of the petitioner had never been terminated by the respondent, who himself had abandoned his job without any intimation to the respondent.

8. The petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PA, wherein he reiterated almost all the averments as stated in the petition. In crossexamination, he admitted that he has not annexed any document with his petition which could go to show that he had worked with the respondent and that he was being paid ₹ 11800/- as salary per month. He admitted that a show cause notice was issued to him and further volunteered that reply to show cause notice was given to the respondent. He denied that he had left the job at his own without any intimation to the respondent company. He further denied that he is gainfully employed.

9. On the contrary, the respondent examined one Shri Masood Ali Baig, as RW- 1, who has stated that the petitioner was working in their factory and during the visit of M.D of the company, it was found that the petitioner and two other workers were sitting idle and gossiping with each other and the work was stopped and for this reason on the directions of M.D, a show cause notice was issued to them by the HR Department but the petitioner had not filed any reply to the show cause notice and became absent from his place of work and abandoned the job. In cross-examination, he admitted that as per the standing orders of the company, the charges leveled against the petitioner fall under the "misconduct" and no enquiry was conducted against him because he failed to file any reply to show cause notice and also failed to turn up after the issuance of the show cause notice.

10. RW-2 Shri Virender Kumar Ojha, Manager HR has stated that the petitioner along-with Sudesh Kumar and Ram Rattan were sitting idle and gossiping during duty hours and they were apprehended by the senior officer i.e M.D of the Company upon which a show cause notice was issued to the petitioner and other two workers but they had not filed any reply and thereafter the petitioner stopped reporting for duties. The management had not terminated the services of the petitioner, who himself had abandoned his job. In cross-examination, he denied that abandonment amounts to misconduct as per the model standing orders and that the services of the petitioner were terminated by the management illegally.

11. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the petitioner was appointed as an operator on 15.2.2006 by the respondent and he worked as such till 23.10.2009. The only plea taken by the respondent is to this effect that the services of the petitioner had never been terminated but he himself had abandoned his job without any intimation However, respondent has failed to prove on record by leading cogent and satisfactory evidence to show that the petitioner had abandoned the job on his own. By mere alleging that the petitioner had abandoned the job on his own is not sufficient to prove the stand of the respondent especially when there is nothing on record which could show that the respondent has ever sent any letter or notice to the petitioner to resume his duties. In ***State of HP & Others Vs. Bhatag Ram & Another reported in Latest HLJ 2007 (HP) 903, our own Hon'ble High Court after relying upon the decision of the Hon'ble Supreme Court in G.T Lad and others V. Chemicals and Fibers India Ltd., AIR 1979 SC 582*** has held that the finding of abandonment is a fact and the same has to be substantiated by leading evidence. In the present case also, as stated above, the respondent has failed to prove the plea of abandonment by leading cogent and satisfactory evidence on record as such it cannot be said that the petitioner has abandoned the job on his own.

12. Now, it has to be seen as to whether the termination of the services of the petitioner is illegal and unjustified. Admittedly, a show cause notice has been issued to the petitioner but no enquiry was conducted against him in any manner. It is settled legal proposition that a workman, against whom misconduct is alleged, cannot be dismissed or discharged unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if there is proved misconduct against the workman, he cannot be dis-charged or dismissed from service unless he has been afforded reasonable opportunity of being heard before initiating any action against him by the employer/respondent. It has been admitted by the respondent in the reply that the petitioner had completed 240 days in one year. Since, the petitioner had completed 240 days in twelve calendar months preceding his termination, a reasonable opportunity of being heard should have been afforded to him and proper enquiry should have been held before terminating his services. **In *D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments -221*, the Hon'ble Apex Court** has held as under:

> *"Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service."*

In a recent judgment of our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors.** the Hon'ble High Court has held that termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

> "8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:
>
> 9. ……..

10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.

11. ……..

12. …….

13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

In the instant case, admittedly, the petitioner had worked with the respondent w.e.f. 15.2.2006 to 23.10.2009 continuously meaning thereby the petitioner had completed 240 working days in twelve calendar months preceding his termination. However, the petitioner was never asked to answer any charges as no chargesheet was issued to him and no enquiry was held before terminating his services, on the basis of the alleged misconduct. Hence, the termination of the services of the petitioner without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. **In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana),** the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

"16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity……..."

13. Therefore, in view of my aforesaid discussion, as it is clear that the petitioner had worked for more than 240 days in twelve calendar months preceding his termination, the respondent was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating his services. But, no such compliance was made by the respondent, hence, there is violation of section 25-F of the Act, on the part of respondent. As a result, the termination of petitioner w.e.f. 23.10.2009 is not sustainable in the eyes of law and is hereby set aside.

14. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner w.e.f. 23.10.2009, by the respondent without complying with the provisions of the

Act, is illegal and unjustified. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no.2.

15. Since, I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is improper, illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

16. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

17. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

18. In the present case, the petitioner has failed to discharge his burden by placing any material on record except for his bald statement that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue No. 3.

19. In support of this issue, the learned counsel for the respondent contended that since the petitioner has filed the present application directly before this Court, for this reason, in the absence of reference, the same is not maintainable. However, when regard is given to the entire record, it is an admitted fact that after the termination of the services petitioner, he raised an industrial dispute which fact is also clear from the reply filed by the respondent wherein the respondent has admitted that a demand notice was served upon them. Since, the petitioner has served a demand notice dated 24.10.2009, it cannot be said that the present petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in

service forthwith with seniority and continuity. However, the petitioner is not entitled to back wages. Let a copy of this order/award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 24th Day of June, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla
Camp at Nalagarh.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT NALAGARH

App. No. : 27 of 2013

Instituted on. : 21.5.2013

Decided on : 24.6.2016

Sudesh Kumar C/o Shri A.K Sharma, R/o Sai Road, Baddi, HP. ...*Petitioner.*

Vs.

The Geep Battries (1) Ltd., Plot no. 66 and 67 HPSIDC, Juddi Kalan, District Solan, HP
. ...Respondent

Petition under section 2-A of the Industrial Disputes Act, 1947.

For petitioner : Shri A.K Sharma, AR.

For respondent : Shri Rajeev Sharma, Advocate.

ORDER/AWARD

In nutshell the case of the petitioner is that he was employed as an operator on 24.12.2007 by the respondent and was drawing last wages of ₹ 8000/- per month. It is further stated that the petitioner had completed more than 240 days continuously before this termination and that his services were terminated on 23.10.2009 without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) as neither any notice was served upon him nor he was paid compensation. It is also stated that the petitioner had served a demand notice dated 24.10.2009 to the respondent and copy of which was sent to the respondent but the conciliation officer sent his failure report on 3.9.2010. Against this back-drop a prayer has been made for his reinstatement along-with all consequential service benefits including back-wages.

2. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, that the petitioner has not come to this Court with clean hands and the petitioner is gainfully employed. On merits, it has been admitted

that the petitioner joined the respondent as an operator w.e.f. 24.12.2007 but it is denied that the petitioner was drawing ` 8000/- per month at the time of his abandoning the job. It is admitted that the petitioner had completed 240 days in one year. It is submitted that when a senior officer of the company visited the factory, he found that three persons including the petitioner were sitting idle during duty hours and thereafter a show cause notice was issued to the petitioner but he instead of filing the reply to show cause notice, abandoned the job. The services of the petitioner had never been terminated by the respondent, who himself had abandoned his job. The respondent prayed for the dismissal of the claim petition.

3. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 17.1.2014.

1. Whether the termination of the petitioner w.e.f. 23.10.2009 is illegal and unjustified as alleged? ...*OPP*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP*

3. Whether this petition is not maintainable as alleged? ...*OPR*

4. Relief.

4. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

5. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1	Yes.
Issue no.2	Entitled for reinstatement in service with seniority andcontinuity but without back-wages.
Issue no.3	No.
Relief.	Petition allowed per operative part of order/award.

Reasons for findings

Issues no.1.

6. The AR for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that before terminating his services no enquiry had been conducted against him.

7. On the other hand, Ld. counsel for the respondent contended that the services of the petitioner had never been terminated by the respondent, who himself had abandoned his job without any intimation to the respondent.

8. The petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PA, wherein he reiterated almost all the averments as stated in the petition. In

crossexamination, he admitted that he has not annexed any document with his petition which could go to show that he had worked with the respondent and that he was being paid ₹ 8000/- as salary per month. He admitted that a show cause notice was issued to him and further volunteered that reply to show cause notice was given to the respondent. He denied that he had left the job at his own without any intimation to the respondent company. He further denied that he is gainfully employed.

9. On the contrary, the respondent examined one Shri Masood Ali Baig, as RW- 1, who has stated that the petitioner was working in their factory and during the visit of M.D of the company, it was found that the petitioner and two other workers were sitting idle and gossiping with each other and the work was stopped and for this reason on the directions of M.D, a show cause notice was issued to them by the HR Department but the petitioner had not filed any reply to the show cause notice and became absent from his place of work and abandoned the job. In cross-examination, he admitted that as per the standing orders of the company, the charges leveled against the petitioner fall under the "misconduct" and no enquiry was conducted against him because he failed to file any reply to show cause notice and also failed to turn up after the issuance of the show cause notice.

10. RW-2 Shri Virender Kumar Ojha, Manager HR has stated that the petitioner along-with Sudesh Kumar and Ram Rattan were sitting idle and gossiping during duty hours and they were apprehended by the senior officer i.e M.D of the Company upon which a show cause notice was issued to the petitioner and other two workers but they had not filed any reply and thereafter the petitioner stopped reporting for duties. The management had not terminated the services of the petitioner, who himself had abandoned his job. In cross-examination, he denied that abandonment amounts to misconduct as per the model standing orders and that the services of the petitioner were terminated by the management illegally.

11. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the petitioner was appointed as an operator on 24.12.2007 by the respondent and he worked as such till 23.10.2009. The only plea taken by the respondent is to this effect that the services of the petitioner had never been terminated but he himself had abandoned his job without any intimation However, respondent has failed to prove on record by leading cogent and satisfactory evidence to show that the petitioner had abandoned the job on his own. By mere alleging that the petitioner had abandoned the job on his own is not sufficient to prove the stand of the respondent especially when there is nothing on record which could show that the respondent has ever sent any letter or notice to the petitioner to resume his duties. In ***State of HP & Others Vs. Bhatag Ram & Another reported in Latest HLJ 2007 (HP) 903, our own Hon'ble High Court after relying upon the decision of the Hon'ble Supreme Court in G.T Lad and others V. Chemicals and Fibers India Ltd., AIR 1979 SC 582*** *has held that* the finding of abandonment is a fact and the same has to be substantiated by leading evidence. In the present case also, as stated above, the respondent has failed to prove the plea of abandonment by leading cogent and satisfactory evidence on record as such it cannot be said that the petitioner has abandoned the job on his own.

12. Now, it has to be seen as to whether the termination of the services of the petitioner is illegal and unjustified. Admittedly, a show cause notice has been issued to the petitioner but no enquiry was conducted against him in any manner. It is settled legal proposition that a workman, against whom misconduct is alleged, cannot be dismissed or discharged unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if there is proved misconduct against the workman, he cannot be dis-charged or dismissed from service unless he has been afforded reasonable opportunity of being heard before initiating any action against him by the employer/respondent. It has been admitted by the respondent in the reply that the petitioner had completed 240 days in one year. Since, the petitioner had completed 240 days in twelve calendar

months preceding his termination, a reasonable opportunity of being heard should have been afforded to him and proper enquiry should have been held before terminating his services. **In *D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments -221*, the Hon'ble Apex Court** has held as under:

> *"Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service."*

In a recent judgment of our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors.** the Hon'ble High Court has held that termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

> "8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:
>
> 9……..
>
> 10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.
>
> 11. ……..
>
> 12. …….
>
> 13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

In the instant case, admittedly, the petitioner had worked with the respondent w.e.f. 24.12.2007 to 23.10.2009 continuously meaning thereby the petitioner had completed 240 working days in twelve calendar months preceding his termination. However, the petitioner was never asked to answer any charges as no chargesheet was issued to him and no enquiry was held before terminating his services, on the basis of the alleged misconduct. Hence, the termination of the services of the petitioner without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. **In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana),** the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

> "16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for

retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity……..."

13. Therefore, in view of my aforesaid discussion, as it is clear that the petitioner had worked for more than 240 days in twelve calendar months preceding his termination, the respondent was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating his services. But, no such compliance was made by the respondent, hence, there is violation of section 25-F of the Act, on the part of respondent. As a result, the termination of petitioner w.e.f. 23.10.2009 is not sustainable in the eyes of law and is hereby set aside.

14. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner w.e.f. 23.10.2009, by the respondent without complying with the provisions of the Act, is illegal and unjustified. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no.2.

15. Since, I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is improper, illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

16. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

17. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that:

"16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……..."

18. In the present case, the petitioner has failed to discharge his burden by placing any material on record except for his bald statement that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue No.3.

19. In support of this issue, the learned counsel for the respondent contended that since the petitioner has filed the present application directly before this Court, for this reason, in the absence of reference, the same is not maintainable. However, when regard is given to the entire record, it is an admitted fact that after the termination of the services petitioner, he raised an industrial dispute which fact is also clear from the reply filed by the respondent wherein the respondent has admitted that a demand notice was served upon them. Since, the petitioner has served a demand notice dated 24.10.2009, it cannot be said that the present petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However, the petitioner is not entitled to back wages. Let a copy of this order/award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 24th Day of June, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla
Camp at Nalagarh.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. : 19 of 2014.

Instituted on. : 13.2.2014.

Decided on : 29.6.2016.

Uma Devi W/o Shri Gur Dass R/o VPO Jangi, Tehsil Moorang, District Kinnaur, HP.
. .*Petitioner.*

Vs.

Executive Engineer, IPH Division Pooh, District Kinnaur, HP. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjan Verma, Advocate.

For respondent : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"**Whether termination of the services of Smt. Uma Devi W/o Shri Gur Dass R/o Village & P.O Jangi, Tehsil Moorang, District Kinnaur, HP from time to time by the Executive Engineer, I&PH Division Pooh, District Kinnaur HP w.e.f. 2002 to 2010 without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified?** If not, **what amount of back-wages, seniority, past servicen benefits and compensation the above worker is entitled to from the above employer**?"

2. Briefly, the case of the petitioner is that w.e.f. 1.4.1986, she had been employed as beldar on daily wages basis by the respondent division which was subsequently bifurcated and a new division was constituted at Pooh and the services of the petitioner were transferred to the new division and as such presently the petitioner is working under respondent division. It is further stated that the petitioner had completed 180 working days (as required in a Tribal area) in a calendar year for so many years but the respondent had given breaks in her service with malafide intention. It is also stated that juniors/contemporary workmen to the petitioner namely Manohar Lal, Yumpal Singh and Ram Bhagat were allowed to continue in their service without any breaks and even their services have also been regularized whereas the services of the petitioner had not been regularized by the respondent and as such the action of the respondent is arbitrary, illegal and contrary to the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). Against his back-drop a prayer has been made that the respondent be directed to regularize the services of the petitioner along-with seniority and continuity including back-wages.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability and that being the heavy snow bound area, there was no working season for labourer during the months of October to March/April. On merits, it has been asserted that the petitioner had been engaged on daily wage/seasonal basis in September, 1988 under respondent division at Reckongpeo and on bifurcation of division to Pooh, the muster rolls/vouchers were also transferred to IPH Division Pooh and as such the petitioner was engaged on seasonal basis on Flow Irrigation Scheme, Jangi, Phase-1 by respondent department. It is denied that the petitioner had completed 180 days in each calendar year. It is asserted that the work in Akpa sub- division is a seasonal one and labourers were deployed for one season to another as the Akpa sub division is a tribal and snow bound area, hence, due to snow there is no working season during the months of October to March/April and depends up to the conditions of weather and as such the workers are being engaged against development work founded during working season. It is denied that the services of the petitioner were terminated from time to time. It is asserted that the services of S/Shri Manohar Lal, Yumpal Singh and Ram Bhagat, who are juniors/contemporary workmen to the petitioner have been regularized as they have completed 180 working days in each calendar year without any break and since the petitioner had not completed 180 working days in each calendar year, her services were not regularized. The respondent prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 13.8.2014.

1. Whether the termination of the services of the petitioner from time to time w.e.f. 2002 to 2010 is illegal and unjustified as alleged? ...*OPP*

2. If issue no.1 is proved in affirmative to what service benefits, the petitioner is entitled to? ...*OPP*

3. Whether the present reference is not maintainable as alleged in preliminary objection?` ...*OPP*

4. Relief.

5. Besides having heard the learned counsels for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to seniority and continuity.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings.

Issues no.1.

7. To prove her case, the petitioner stepped into the witness box as PW-1 to depose that w.e.f. 1st April, 1986, she was appointed as beldar on daily wages in IPH Division Reckongpeo but the above said division was bifurcated and new division was created and her service record was transferred to IPH division Pooh and she was employed with the respondent on daily wages since her appointment. She had completed 180 days in each calendar year and the work with the respondent department was continuous in nature. Some of her juniors namely Manohar Lal, Bhoom Pal Singh, Ram Bhagat and Bhumi Dev were regularized by the department and as such the action of the respondent is arbitrary, illegal and against the provisions of I.D Act. In cross-examination, she admitted that District Kinnaur is snow bound area for 3-4 months and during the period of snow, there is no work and that the department used to distribute the work among the workers on uniform basis so that everyone gets the opportunity to work. She denied that she had completed 180 days in eight years only but admitted that she used to be engaged on muster roll basis only. She denied that she used to leave the job at her own and that Manohar Lal, Bhoom Pal Singh, Ram Bhagat and Bhumi Dev were not juniors to her. She admitted that the department used to call the workers whenever there is availability of work

8. On the other hand, the respondent examined one Shri Dawa Singh, Assistant Engineer as RW-1, who tendered in evidence affidavit Ex. RW-1/A wherein he supported almost all the averments as stated in reply. He also tendered in evidence authority letter Ex. RW-1/B and mandays chart of petitioner Ex. RW-1/C. In cross-examination, he admitted that Mohan Lal and Bhum Pal Singh were juniors to the petitioner and that breaks were given to the petitioner and she was not allowed to complete 180 days in a year.

9. I have considered the contentions of the learned counsel for petitioner as well as learned ADA for respondent and also scrutinized the record of the case minutely.

10. After the closer scrutiny of the record, it has become clear that the petitionerm was initially engaged in the year 1988 and it is also the admitted case of the respondent that she is being engaged regularly in every working season. It is not in dispute that the mandatory working days of 240 days in a calendar year have been reduced to 180 days in Tribal/Snow bound area by the State Government. As per mandays chart Ex. RW-1/C, the petitioner had completed 226 days in the year 1994, 217 days in the year, 1995, 205 days in the year, 1996, 227 days in 1997, 265 days in 1998, 236 days in the year, 1999, 271 days in 2000 and 199 days in 2001. The aforesaid year wise mandays chart of the petitioner also shows that she had worked for 175 days in the year, 2002, 179 days in 2003, 173.5 days in 2004, 165 days in 2005, 137.5 days in 2006, 175 days in 2007, 151 days in 2008, 152 days in 2009, 54 days in 2010, 159 days in 2011, 108 days in 2012 and 149 days in 2013. The case of the petitioner is that the respondent had given breaks in her service with malafide intention despite the fact that work with the respondent department was continuous in nature. Though, the case of the respondent is that since the work being allotted to the workers including the petitioner was on coterminus basis, therefore, the workers automatically stood terminated/dis-engaged keeping in view the principles of co-terminus basis. However, in cross-examination, RW-1 admitted that the breaks were given to the petitioner and she was not allowed to complete 180 days in a year. Therefore, from the cross-examination of RW-1 it has become clear that intentional breaks were given to the petitioner so that she could not complete 180 days in a calendar year which action of the respondent by not allowing the petitioner to complete 180 days w.e.f. 2002 to 2010 without complying with the provisions of the Act was not bonafide and was only adopted to defeat the provisions of section 25-F of the Act and the same amounts to unfair labour practice. Hence, I have no hesitation in holding that such termination/dis-engagement of the petitioner from time to time w.e.f. 2002 to 2010 in contravention of the provisions of the Act is illegal and unjustified.

11. The learned counsel for the petitioner further contended that though the petitioner was not allowed to complete 180 days in every calendar year w.e.f. 2002 to 2010 whereas at the same time her juniors namely Manohar Lal, Yum Pal Singh and Ram Bhagat have been allowed to continue in their service without any breaks and even their services have been regularized. It has been admitted by the respondent in the reply that juniors to the petitioner S/Shri Manohar Lal, Yum Pal Singh and Ram Bhagat have been regularized by the department as they have completed 180 days in every calendar year and fulfilled the criteria for regularization.

12. Therefore, from the perusal of record, it has become clear that the petitioner was not allowed to complete 180 days in every calendar year whereas at the same time her juniors were allowed to complete 180 days in every calendar which is against the provisions of section 25-G of the Act. Hence, it can safely be held that time to time termination of the services of the petitioner by the respondent w.e.f. 2002 to 2010 without complying with the provisions of the Act is illegal and unjustified. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

Issue no.2

13. Since, I have held under issue no.1 above that time to time termination of the services of the petitioner by the respondent w.e.f. 2002 to 2010 without complying with the provisions of the Act is illegal and unjustified, hence, the petitioner is held entitled for the seniority and continuity without considering the period of breaks which were given to her intentionally from time to time w.e.f. 2002 to 2010. It is made clear that the entitlement, if any, for regularization of the petitioner shall be considered and processed in accordance with the policy of State Government.

14. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

15. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue No.3.

16. In support of this issue, no evidence has been led by the respondent in order to show that as to how this reference is not maintainable especially when the same has been made by the appropriate government to this Court for adjudication. Hence, in view of no evidence on record, it cannot be said that the present reference is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is held entitled for the seniority and continuity without considering the period of breaks which were given to her intentionally from time to time w.e.f. 2002 to 2010. It is made clear that the entitlement, if any, for regularization of the petitioner shall be considered and processed by the respondent in accordance with the policy of State Government. However, the petitioner is not entitled to any back wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records. Announced in the open Court today on this 29th Day of June, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref.	:	63 of 2013.
Instituted on.	:	9.9.2013.
Decided on	:	29.6.2016.

Sanam Devi W/o Shri Puran Chand R/o VPO Jangi, Tehsil Moorang, District Kinnaur, HP.
...Petitioner.

Vs.

Executive Engineer, IPH Division Pooh, District Kinnaur, HP. ...*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Niranjan Verma, Advocate.

For respondent : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"**Whether time to time termination of the services of Smt. Sanam Devi W/o Shri Gian Singh R/o Village & P.O Jangi, Tehsil Moorang, District Kinnaur, HP by the Executive Engineer, I&PH Division Pooh, District Kinnaur HP w.e.f. 2002 to 2010 without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified?** If **not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?**"

2. Briefly, the case of the petitioner is that w.e.f. 1.4.1993, she had been employed as beldar on daily wages basis by the respondent division which was subsequently bifurcated and a new division was constituted at Pooh and the services of the petitioner were transferred to the new division and as such presently the petitioner is working under respondent division. It is further stated that the petitioner had completed 180 working days (as required in a Tribal area) in a calendar year for so many years but the respondent had given breaks in her service with malafide intention. It is also stated that juniors/contemporary workmen to the petitioner namely Manohar Lal, Yumpal Singh and Ram Bhagat were allowed to continue in their service without any breaks and even their services have also been regularized whereas the services of the petitioner had not been regularized by the respondent and as such the action of the respondent is arbitrary, illegal and contrary to the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). Against his back-drop a prayer has been made that the respondent be directed to regularize the services of the petitioner along-with seniority and continuity including back-wages.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability and that being the heavy snow bound area, there was no working season for labourer during the months of October to March/April. On merits, it has been asserted that the petitioner had been engaged on daily wage/seasonal basis in April, 1991 under respondent division at Reckongpeo and on bifurcation of division to Pooh, the muster rolls/vouchers were also transferred to IPH Division Pooh and as such the petitioner was engaged on seasonal basis on Flow Irrigation Scheme, Jangi, Phase-1 by respondent department. It is denied that the petitioner had completed 180 days in each calendar year. It is asserted that the work in Akpa sub- division is a seasonal one and labourers were deployed for one season to another as the Akpa sub division is a tribal and snow bound area, hence, due to snow there is no working season during the months of October to March/April and depends up to the conditions of weather and as such the workers are being engaged against development work founded during working season. It is denied that the services of the petitioner were terminated from time to time. It is asserted that the services of S/Shri Manohar Lal, Yumpal Singh and Ram Bhagat, who are juniors/contemporary workmen to the petitioner have been regularized as they have completed 180 working days in each calendar year without any break and since the petitioner had not completed 180 working days in each calendar year, her services were not regularized. The respondent prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 13.8.2014.

1. Whether the termination of the services of the petitioner from time to time w.e.f. 2002 to 2010 is illegal and unjustified as alleged? ...*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits, the petitioner is entitled to? ...*OPP.*

3. Whether the present reference is not maintainable as alleged in preliminary objection? ...OPR.

4. Relief.

5. Besides having heard the learned counsels for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to seniority and continuity w.e.f. 2002 to 2010.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings

Issues no.1.

7. To prove her case, the petitioner stepped into the witness box as PW-1 to depose that *w.e.f.* 1st April, 1993, she was appointed as beldar on daily wages in IPH Division Reckongpeo but the above said division was bifurcated and new division was created and her service record was transferred to IPH division Pooh and she was employed with the respondent on daily wages since her appointment. She had completed 180 days in each calendar year and the work with the respondent department was continuous in nature. Some of her juniors namely Manohar Lal, Bhoom Pal Singh, Ram Bhagat and Bhumi Dev were regularized by the department and as such the action of the respondent is arbitrary, illegal and against the provisions of I.D Act. In cross-examination, she admitted that District Kinnaur is snow bound area for 3-4 months and during the period of snow, there is no work and that the department used to distribute the work among the workers on uniform basis so that everyone gets the opportunity to work. She denied that she had completed 180 days in six years only but admitted that she used to be engaged on muster roll basis only. She denied that she used to leave the job at her own and that Manohar Lal, Bhoom Pal Singh, Ram Bhagat and Bhumi Dev are not juniors to her. She admitted that the department used to call the workers whenever there is availability of work.

8. On the other hand, the respondent examined one Shri Dawa Singh, Assistant Engineer as RW-1, who tendered in evidence affidavit Ex. RW-1/A wherein he supported almost all the averments as stated in reply. He also tendered in evidence authority letter Ex. RW-1/B and mandays chart of petitioner Ex. RW-1/C. In cross-examination, he admitted that Mohan Lal and

Bhum Pal Singh were juniors to the petitioner and that breaks were given to the petitioner and she was not allowed to complete 180 days in a year.

9. I have considered the contentions of the learned counsel for petitioner as well as learned ADA for respondent and also scrutinized the record of the case minutely.

10. After the closer scrutiny of the record, it has become clear that the petitioner was initially engaged in the year 1991 and it is also the admitted case of the respondent that she is being engaged regularly in every working season. It is not in dispute that the mandatory working days of 240 days in a calendar year have been reduced to 180 days in Tribal/Snow bound area by the State Government. As per mandays chart Ex. RW-1/C, the petitioner had completed 190 days in the year 1997, 270 days in the year, 1998, 234 days in the year, 1999, 237 days in 2000, 199 days in 2001 and 181 days in the year, 2003. The aforesaid year wise mandays chart of the petitioner also shows that she had worked for 174.5 days in the year, 2004, 165 days in 2005, 137.5 days in 2006, 175 days in 2007, 151 days in 2008, 152 days in 2009, 54 days in 2010, 159 days in 2011, 108 days in 2012 and 149 days in the year, 2013. The case of the petitioner is that the respondent had given breaks in her service with malafide intention despite the fact that work with the respondent department was continuous in nature. Though, the case of the respondent is that since the work being allotted to the workers including the petitioner was on co-terminus basis, therefore, the workers automatically stood terminated/dis-engaged keeping in view the principles of co-terminus basis. However, in crossexamination, RW-1 admitted that the breaks were given to the petitioner and she was not allowed to complete 180 days in a year. Therefore, from the cross-examination of RW-1 it has become clear that intentional breaks were given to the petitioner so that she could not complete 180 days in a calendar year which action of the respondent by not allowing the petitioner to complete 180 days w.e.f. 2002 to 2010 without complying with the provisions of the Act was not bonafide and was only adopted to defeat the provisions of section 25-F of the Act and the same amounts to unfair labour practice. Hence, I have no hesitation in holding that such termination/dis-engagement of the petitioner from time to time w.e.f. 2002 to 2010 in contravention of the provisions of the Act is illegal and unjustified.

11. The learned counsel for the petitioner further contended that though the petitioner was not allowed to complete 180 days in every calendar year w.e.f. 2002 to 2010 whereas at the same time her juniors namely Manohar Lal, Yum Pal Singh and Ram Bhagat have been allowed to continue in their service without any breaks and even their services have been regularized. It has been admitted by the respondent in the reply that juniors to the petitioner S/Shri Manohar Lal, Yum Pal Singh and Ram Bhagat have been regularized by the department as they have completed 180 days in every calendar year and fulfilled the criteria for regularization.

12. Therefore, from the perusal of record, it has become clear that the petitioner was not allowed to complete 180 days in every calendar year whereas at the same time her juniors were allowed to complete 180 days in every calendar which is against the provisions of section 25-G of the Act. Hence, it can safely be held that time to time termination of the services of the petitioner by the respondent *w.e.f.* 2002 to 2010 without complying with the provisions of the Act is illegal and unjustified. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

Issue no. 2

13. Since, I have held under issue no.1 above that time to time termination of the services of the petitioner by the respondent w.e.f. 2002 to 2010 without complying with the provisions of the Act is illegal and unjustified, hence, the petitioner is held entitled for the seniority and continuity without considering the period of breaks which were given to her intentionally from time to time w.e.f. 2002 to 2010. It is made clear that the entitlement, if any, for regularization of the petitioner shall be considered and processed in accordance with the policy of State Government.

14. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

15. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue No. 3.

16. In support of this issue, no evidence has been led by the respondent in order to show that as to how this reference is not maintainable especially when the same has been made by the appropriate government to this Court for adjudication. Hence, in view of no evidence on record, it cannot be said that the present reference is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is held entitled for the seniority and continuity in service without considering the period of breaks which were given to her intentionally from time to time w.e.f. 2002 to 2010. It is made clear that the entitlement, if any, for regularization of the petitioner shall be considered and processed by the respondent in accordance with the policy of State Government. However, the petitioner is not entitled to any back wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 29th Day of June, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref.	:	05 of 2013.
Instituted on.	:	27.2.2013.
Decided on	:	29.6.2016.

Raksha Kumari D/o Shri Nand Lal R/o VPO Jangi, Tehsil Moorang, District Kinnaur, HP.
...Petitioner.

Vs.

Executive Engineer, IPH Division Pooh, District Kinnaur, HP. ...*Respondent*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjan Verma, Advocate.

For respondent : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"**Whether termination of the services of Smt.** Raksha Kumari D/o Shri Nand Lal **R/o Village & P.O Jangi, Tehsil Moorang, District Kinnaur, HP from time to time by the Executive Engineer, I&PH Division Pooh, District Kinnaur HP w.e.f. 2002 to 2010 without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"**

2. Briefly, the case of the petitioner is that w.e.f. 1.4.1986, she had been employed as beldar on daily wages basis by the respondent division which was subsequently bifurcated and a new division was constituted at Pooh and the services of the petitioner were transferred to the new division and as such presently the petitioner is working under respondent division. It is further stated that the petitioner had completed 180 working days (as required in a Tribal area) in a calendar year for so many years but the respondent had given breaks in her service with malafide intention. It is also stated that juniors/contemporary workmen to the petitioner namely Manohar Lal, Yumpal Singh and Ram Bhagat were allowed to continue in their service without any breaks and even their services have also been regularized whereas the services of the petitioner had not been regularized by the respondent and as such the action of the respondent is arbitrary, illegal and contrary to the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). Against his back-drop a prayer has been made that the respondent be directed to regularize the services of the petitioner along-with seniority **and** continuity including back-wages.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability and that being the heavy snow bound area, there was no working season for labourer during the months of October to March/April. On merits, it has been asserted that the petitioner had been engaged on daily wage/seasonal basis in September, 1988, under respondent division at Reckongpeo and on bifurcation of division to Pooh, the muster rolls/vouchers were also transferred to IPH Division Pooh and as such the petitioner was engaged on seasonal basis on Flow Irrigation Scheme, Jangi, Phase-1 by respondent department. It is denied that the petitioner had completed 180 days in each calendar year. It is asserted that the work in Akpa sub- division is a seasonal one and labourers were deployed for one season to another as the Akpa sub division is a tribal and snow bound area, hence, due to snow there is no working season during the months of October to March/April and depends up to the conditions of weather and as such the workers are being engaged against development work founded during working season. It is denied that the services of the petitioner were terminated from time to time. It is asserted that the services of S/Shri Manohar Lal, Yumpal Singh and Ram Bhagat, who are juniors/contemporary workmen to the petitioner have been regularized as they have completed 180 working days in each calendar year without any break and since the petitioner had not completed 180 working days in each calendar year, her services were not regularized. The respondent prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 13.8.2014.

1. Whether the termination of the services of the petitioner from time to time w.e.f. 2002 to 2010 is illegal and unjustified as alleged? ...*OPP*

2. If issue no.1 is proved in affirmative to what service benefits, the petitioner is entitled to? ..*OPP*

3. Whether the present reference is not maintainable as alleged in preliminary objection? ...*OPR*

4. Relief.

5. Besides having heard the learned counsels for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to seniority and continuity.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings.

Issues no.1.

7. To prove her case, the petitioner stepped into the witness box as PW-1 to depose that w.e.f. 1st April, 1986, she was appointed as beldar on daily wages in IPH Division Reckongpeo but the above said division was bifurcated and new division was created and her service record was transferred to IPH division Pooh and she was employed with the respondent on daily wages since her appointment. She had completed 180 days in each calendar year and the work with the respondent department was continuous in nature. Some of her juniors namely Manohar Lal, Bhoom Pal Singh, Ram Bhagat and Bhumi Dev were regularized by the department and as such the action of the respondent is arbitrary, illegal and against the provisions of I.D Act. In cross-examination, she admitted that District Kinnaur is snow bound area for 3-4 months and during the period of snow, there is no work and that the department used to distribute the work among the workers on uniform basis so that everyone gets the opportunity to work. She denied that she had completed 180 days in eight years only but admitted that she used to be engaged on muster roll basis only. She denied that she used to leave the job at her own and that Manohar Lal, Bhoom Pal Singh, Ram Bhagat and Bhumi Dev are not juniors to her. She admitted that the department used to call the workers whenever there is availability of work.

8. On the other hand, the respondent examined one Shri Dawa Singh, Assistant Engineer as RW-1, who tendered in evidence affidavit Ex. RW-1/A wherein he supported almost all the averments as stated in reply. He also tendered in evidence authority letter Ex. RW-1/B and mandays chart of petitioner Ex. RW-1/C. In cross-examination, he admitted that Mohan Lal and

Bhum Pal Singh were juniors to the petitioner and that breaks were given to the petitioner and she was not allowed to complete 180 days in a year.

9. I have considered the contentions of the learned counsel for petitioner as well as learned ADA for respondent and also scrutinized the record of the case minutely.

10. After the closer scrutiny of the record, it has become clear that the petitioner was initially engaged in the year 1998 and it is also the admitted case of the respondent that she is being engaged regularly in every working season. It is not in dispute that the mandatory working days of 240 days in a calendar year have been reduced to 180 days in Tribal/Snow bound area by the State Government. As per mandays chart Ex. RW-1/C, the petitioner had completed 191 days in the year 1993, 199 days in the year, 1994, 193 days in the year, 1996, 187 days in 1997, 224 days in 1998, 215 days in 1999, 194 days in 200 and 197 days in the year, 2001. The aforesaid year wise mandays chart of the petitioner also shows that she had worked for 174, days in 2002, 166 days in 2003, 178.5 days in the year, 2004, 165 days in 2005, 136.5 days in 2006, 121 days in 2007, 151 days in 2008, 145 days in 2009, 54 days in 2010, 158 days in 2011, 108 days in 2012 and 149 days in the year, 2013. The case of the petitioner is that the respondent had given breaks in her service with malafide intention despite the fact that work with the respondent department was continuous in nature. Though, the case of the respondent is that since the work being allotted to the workers including the petitioner was on coterminus basis, therefore, the workers automatically stood terminated/dis-engaged keeping in view the principles of co-terminus basis. However, in cross-examination, RW-1 admitted that the breaks were given to the petitioner and she was not allowed to complete 180 days in a year. Therefore, from the cross-examination of RW-1 it has become clear that intentional breaks were given to the petitioner so that she could not complete 180 days in a calendar year which action of the respondent by not allowing the petitioner to complete 180 days w.e.f. 2002 to 2010 without complying with the provisions of the Act was not bonafide and was only adopted to defeat the provisions of section 25-F of the Act and the same amounts to unfair labour practice. Hence, I have no hesitation in holding that such termination/dis-engagement of the petitioner from time to time w.e.f. 2002 to 2010 in contravention of the provisions of the Act is illegal and unjustified.

11. The learned counsel for the petitioner further contended that though the petitioner was not allowed to complete 180 days in every calendar year w.e.f. 2002 to 2010 whereas at the same time her juniors namely Manohar Lal, Yum Pal Singh and Ram Bhagat have been allowed to continue in their service without any breaks and even their services have been regularized. It has been admitted by the respondent in the reply that juniors to the petitioner S/Shri Manohar Lal, Yum Pal Singh and Ram Bhagat have been regularized by the department as they have completed 180 days in every calendar year and fulfilled the criteria for regularization.

12. Therefore, from the perusal of record, it has become clear that the petitioner was not allowed to complete 180 days in every calendar year whereas at the same time her juniors were allowed to complete 180 days in every calendar which is against the provisions of section 25-G of the Act. Hence, it can safely be held that time to time termination of the services of the petitioner by the respondent w.e.f. 2002 to 2010 without complying with the provisions of the Act is illegal and unjustified. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

Issue no. 2

13. Since, I have held under issue no.1 above that time to time termination of the services of the petitioner by the respondent w.e.f. 2002 to 2010 without complying with the provisions of the Act is illegal and unjustified, hence, the petitioner is held entitled for the seniority and

continuity without considering the period of breaks which were given to her intentionally from time to time w.e.f. 2002 to 2010. It is made clear that the entitlement, if any, for regularization of the petitioner shall be considered and processed in accordance with the policy of State Government.

14. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

15. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue No.3.

16. In support of this issue, no evidence has been led by the respondent in order to show that as to how this reference is not maintainable especially when the same has been made by the appropriate government to this Court for adjudication. Hence, in view of no evidence on record, it cannot be said that the present reference is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is held entitled for the seniority and continuity without considering the period of breaks which were given to her intentionally from time to time w.e.f. 2002 to 2010. It is made clear that the entitlement, if any, for regularization of the petitioner shall be considered and processed by the respondent in accordance with the policy of State Government. However, the petitioner is not entitled to any back wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 29th Day of June, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. : 72 of 2013.

Instituted on. : 5.10.2013.

Decided on : 29.6.2016.

Norjang Yum W/o Shri Gian Chand R/o VPO Jangi, Tehsil Moorang, District Kinnaur, HP.
...Petitioner.

Vs.

Executive Engineer, IPH Division Pooh, District Kinnaur, HP. *...Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjan Verma, Advocate.

For respondent : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"**Whether time to time termination of the services of Smt.** Norjang Yum W/o Shri Gian Chand **R/o Village & P.O Jangi, Tehsil Moorang, District Kinnaur, HP by the Executive Engineer, I&PH Division Pooh, District Kinnaur HP w.e.f. 2003 to 2010 without complying with the provisions of Industrial Disputes Act, 1947 isblegal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"**

2. Briefly, the case of the petitioner is that w.e.f. 1.4.1993, she had been employed as beldar on daily wages basis by the respondent division which was subsequently bifurcated and a new division was constituted at Pooh and the services of the petitioner were transferred to the new division and as such presently the petitioner is working under respondent division. It is further stated that the petitioner had completed 180 working days (as required in a Tribal area) in a calendar year for so many years but the respondent had given breaks in her service with malafide intention. It is also stated that juniors/contemporary workmen to the petitioner namely Manohar Lal, Yumpal Singh and Ram Bhagat were allowed to continue in their service without any breaks and even their services have also been regularized whereas the services of the petitioner had not been regularized by the respondent and as such the action of the respondent is arbitrary, illegal and contrary to the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). Against his back-drop a prayer has been made that the respondent be directed to regularize the services of the petitioner along-with seniority **and** continuity including back-wages.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability and that being the heavy snow bound area, there was no working season for labourer during the months of October to March/April. On merits, it has been asserted that the petitioner had been engaged on daily wage/seasonal basis in May, 1996 under respondent division at Reckongpeo and on bifurcation of division to Pooh, the

muster rolls/vouchers were also transferred to IPH Division Pooh and as such the petitioner was engaged on seasonal basis on Flow Irrigation Scheme, Jangi, Phase-1 by respondent department. It is denied that the petitioner had completed 180 days in each calendar year. It is asserted that the work in Akpa sub- division is a seasonal one and labourers were deployed for one season to another as the Akpa sub division is a tribal and snow bound area, hence, due to snow there is no working season during the months of October to March/April and depends up to the conditions of weather and as such the workers are being engaged against development work founded during working season. It is denied that the services of the petitioner were terminated from time to time. It is asserted that the services of S/Shri Manohar Lal, Yumpal Singh and Ram Bhagat, who are juniors/contemporary workmen to the petitioner have been regularized as they have completed 180 working days in each calendar year without any break and since the petitioner had not completed 180 working days in each calendar year, her services were not regularized. The respondent prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 9.9.2014.

1. Whether the termination of the services of the petitioner from time to time w.e.f. 2003 to 2010 is illegal and unjustified as alleged? ...*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits, the petitioner is entitled to? ... *OPP.*

3. Whether the present reference is not maintainable as alleged in preliminary objection? ...*OPR.*

4. Relief.

5. Besides having heard the learned counsels for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to seniority and continuity.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings.

Issues no.1.

7. To prove her case, the petitioner stepped into the witness box as PW-1 to depose that *w.e.f.* 1st April, 1993, she was appointed as beldar on daily wages in IPH Division Reckongpeo but the above said division was bifurcated and new division was created and her service record was transferred to IPH division Pooh and she was employed with the respondent on daily wages since her appointment. She had completed 180 days in each calendar year and the work with the respondent department was continuous in nature. Some of her juniors namely Manohar Lal, Bhoom

Pal Singh, Ram Bhagat and Bhumi Dev were regularized by the department and as such the action of the respondent is arbitrary, illegal and against the provisions of I.D Act. In cross-examination, she admitted that District Kinnaur is snow bound area for 3-4 months and during the period of snow, there is no work and that the department used to distribute the work among the workers on uniform basis so that everyone gets the opportunity to work. She denied that she had completed 180 days in five years only but admitted that she used to be engaged on muster roll basis only. She denied that she used to leave the job at her own and that Manohar Lal, Bhoom Pal Singh, Ram Bhagat and Bhumi Dev are not juniors to her. She admitted that the department used to call the workers whenever there is availability of work.

8. On the other hand, the respondent examined one Shri Dawa Singh, Assistant Engineer as RW-1, who tendered in evidence affidavit Ex. RW-1/A wherein he supported almost all the averments as stated in reply. He also tendered in evidence authority letter Ex. RW-1/B and mandays chart of petitioner Ex. RW-1/C. In cross-examination, he admitted that Mohan Lal and Bhum Pal Singh were juniors to the petitioner and that breaks were given to the petitioner and she was not allowed to complete 180 days in a year.

9. I have considered the contentions of the learned counsel for petitioner as well as learned ADA for respondent and also scrutinized the record of the case minutely.

10. After the closer scrutiny of the record, it has become clear that the petitioner was initially engaged in the year 1996 and it is also the admitted case of the respondent that she is being engaged regularly in every working season. It is not in dispute that the mandatory working days of 240 days in a calendar year have been reduced to 180 days in Tribal/Snow bound area by the State Government. As per mandays chart Ex. RW-1/C, the petitioner had completed 195 days in the year 1996, 262 days in the year, 1998, 230 days in the year, 1999, 235 days in 2000, and 199 days in 2001. The aforesaid year wise mandays chart of the petitioner also shows that she had worked for 176 days in the year, 2002, 162 days in 2003, 172.5 days in 2004, 148 days in 2005, 135.5 days in 2006, 172 days in 2007, 151 days in 2008, 110 days in 2009, 54 days in 2010, 158 days in 2011, 108 days in 2012 and 149 days in 2013. The case of the petitioner is that the respondent had given breaks in her service with malafide intention despite the fact that work with the respondent department was continuous in nature. Though, the case of the respondent is that since the work being allotted to the workers including the petitioner was on co-terminus basis, therefore, the workers automatically stood terminated/dis-engaged keeping in view the principles of co-terminus basis. However, in crossexamination, RW-1 admitted that the breaks were given to the petitioner and she was not allowed to complete 180 days in a year. Therefore, from the cross-examination of RW-1 it has become clear that intentional breaks were given to the petitioner so that she could not complete 180 days in a calendar year which action of the respondent by not allowing the petitioner to complete 180 days w.e.f. 2003 to 2010 without complying with the provisions of the Act was not bonafide and was only adopted to defeat the provisions of section 25-F of the Act and the same amounts to unfair labour practice. Hence, I have no hesitation in holding that such termination/dis-engagement of the petitioner from time to time *w.e.f.* 2002 to 2010 in contravention of the provisions of the Act is illegal and unjustified.

11. The learned counsel for the petitioner further contended that though the petitioner was not allowed to complete 180 days in every calendar year w.e.f. 2003 to 2010 whereas at the same time her juniors namely Manohar Lal, Yum Pal Singh and Ram Bhagat have been allowed to continue in their service without any breaks and even their services have been regularized. It has been admitted by the respondent in the reply that juniors to the petitioner S/Shri Manohar Lal, Yum Pal Singh and Ram Bhagat have been regularized by the department as they have completed 180 days in every calendar year and fulfilled the criteria for regularization.

12. Therefore, from the perusal of record, it has become clear that the petitioner was not allowed to complete 180 days in every calendar year whereas at the same time her juniors were allowed to complete 180 days in every calendar which is against the provisions of section 25-G of the Act. Hence, it can safely be held that time to time termination of the services of the petitioner by the respondent w.e.f. 2003 to 2010 without complying with the provisions of the Act is illegal and unjustified. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

Issue no. 2

13. Since, I have held under issue no.1 above that time to time termination of the services of the petitioner by the respondent *w.e.f.* 2003 to 2010 without complying with the provisions of the Act is illegal and unjustified, hence, the petitioner is held entitled for the seniority and continuity without considering the period of breaks which were given to her intentionally from time to time w.e.f. 2003 to 2010. It is made clear that the entitlement, if any, for regularization of the petitioner shall be considered and processed in accordance with the policy of State Government.

14. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

15. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue No. 3.

16. In support of this issue, no evidence has been led by the respondent in order to show that as to how this reference is not maintainable especially when the same has been made by the appropriate government to this Court for adjudication. Hence, in view of no evidence on record, it cannot be said that the present reference is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is held entitled for the seniority and continuity in service without considering the period of breaks which were given to her intentionally from time to time *w.e.f.* 2003 to 2010. It is made clear that the entitlement, if any, for regularization of the petitioner shall be considered and processed by the respondent in accordance with the policy of State Government. However, the petitioner is not entitled to any back wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 29th Day of June, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA.

Ref. no. : 33 of 2009.

Instituted on : 27.4.2009.

Decided on : 4.6.2016.

Munish Kumar S/o Shri Krishan Lal R/o Village Bhora, P.O Chambaghat, Tehsil & District Solan, HP. ..*Petitioner.*

VS.

1. The Vice President M/s Himachal Futuristic Communications Ltd., (Wireless Division) 8, Electronics Complex Chambaghat District Solan, HP.

2. I.K Bali, Contractor C/o M/s Himachal Futuristic Communications Ltd., (Wireless Division) 8, Electronics Complex Chambaghat District Solan, HP. ...*Respondents*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C. Bhardwaj, AR

For respondent no.1 : Shri Rahul Mahajan, Advocate.

For respondent no.2 : Ex-parte.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"***Whether the termination of the services of Shri*** **Munish Kumar S/o Shri Krishan Lal** ***workman by the i)*** **the Vice President M/s Himachal Futuristic Communications Ltd., (Wireless Division) 8, Electronics Complex Chambaghat District Solan, HP ii) I.K Bali, Contractor C/o M/s Himachal Futuristic Communications Ltd., (Wireless Division) 8, Electronics Complex Chambaghat District Solan, HP w.e.f. 2.7.2007 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, seniority and amount of compensation the above aggrieved workman is entitled to*?"**

2. Facts, in brief are that initially the petitioner was engaged by the respondent no.1 directly on 26.6.2000 as a safai karmchari (sweeper) and he worked as such in the administrative department to carry on every type of cleaning works. The work assigned to the petitioner is directly related to the respondent no.1 but after some time his services were transferred illegally and shown on the rolls of the contractor i.e respondent no.2 without taking any consent or option from the petitioner just to evade liability. It is further stated that the petitioner did not complain regarding his transfer from the rolls of the company to the roll of the contractor due to the reason that he was threatened termination whereas the nature of work and place of working remained the same on which he was working earlier since his initial appointment. Since the cleanliness of the company is an essential and fore most work and it cannot be called a temporary or casual work, hence, the contract works are the out-come of sham and genuine contracts and contractors are only name sake and name lender only. The respondent no.1 exercised full administrative and financial control and as such there was relationship of master and servant between the petitioner and respondent no.1 and the activity of cleaning always remained regular. It is also stated that as per section 10 of the Contract Regulation and Abolition Act, 1970, the perennial nature of work is prohibited to be taken through contractors, hence principal employer is under statutory obligation to carry on the employment of sweepers on permanent roll of the company and as such the services of the petitioner at later stage shown on the rolls of the contractor is a camouflage sham and in genuine. Even, no notice of change in service had been served upon the petitioner. The petitioner had completed 240 days in the employment of the respondents and as such he was in continuous service for the purpose of section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) and the respondent while removing the petitioner from employment has committed many illegalities against the set norms and even no notice under section 25-N/25-F of the Act was served upon him before terminating his services. It is stated that the work and conduct of the petitioner was more than satisfactory and non-stigmatic in all respects as he was neither served any explanation call, show cause notice, warning, chargesheet nor subjected to any domestic enquiry. Against this back-drop, the petitioner prayed that he be held the workman of the respondent company and he be reinstated on the same post and work in the employment of respondent no.1 since the date of his termination i.e from 2.7.2007 with full back-wages, seniority and other incidental service benefits along-with costs.

3. By filing separate reply, the respondent no.1 contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and there was no employee and employer relationship between the petitioner and respondent no.1. On merits, it has been asserted that the petitioner was a contract labour, who had been deputed by Himachal Security Services, Salogra with the industrial establishment of respondent as safai karamchari (sweeper) in terms of agreements executed between respondent company and Himachal Security Service, Salogra Himachal Pradesh for providing of work force as agreed in terms of the contract which were extended from time to time. It is further submitted that the respondent no.1 had a valid licence and were authorized to engage and provide contract labour i.e safai karmachari for cleaning. Being the employer of the petitioner, the attendance, salary, payment of provident fund under the EPF & MP Act and ESI Act, 1948 and all other statutory compliance was done by the contractor and engaging of contract labour for general cleaning/safai karamchari is not prohibited under section 10 of the Contract Labour & Abolition Act, 1970. From the very beginning, the petitioner was the worker of contractor and not of the respondent company and he was doing the work of safai karamchari in the industrial establishment of respondent company on being deployed by contractor, hence, there is no violation of labour legislation. Since, the petitioner was the employee of contractor i.e respondent no.2 and as such the respondent no.1 is not responsible to pay him all statutory benefits under the law. Hence, respondent no.1 prayed for the dismissal of the petition.

4. Before, I proceed further, it is important to point out here that after having been duly served, the respondent no.2 (contractor) had appeared in person on 10.3.2011 but thereafter he failed to appear before this Court, hence, he was proceeded against ex-parte on 19.4.2011.

5. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

6. On the pleadings of the parties, the following issues were framed on 8.4.2010.

1. Whether the services of the petitioner have been terminated illegally and in an unjustified manner? ...*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits and compensation the petitioner is entitled to? ... *OPP.*

3. Whether the claim petition is not maintainable in view of preliminary objection?...*OPR.*

4. Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to lump sum compensation from respondent no.2 (contractor).
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against theb respondent no.2 (contractor) per operative part of award.

Reasons for findings

Issue no.1

9. The AR appearing on behalf of the petitioner contended that initially the services of the petitioner, as safai karamchari, have been engaged by the respondent no.1 company but lateron he has been shown engaged through respondent no.2, contractor. He further contended that the services of the petitioner were terminated illegally without following the mandatory provisions of the Act as neither any notice was served upon him nor any enquiry was conducted against him. He also contended that there is no contract between the respondent company and so called contract to engage the workers through contractor is sham, ingenuine and camouflage for all purposes and since the petitioner had completed 240 working days in each calendar year preceding his termination as such his termination without the compliance of the provisions of the Act is illegal and unjustified.

10. On the other hand, the learned counsel for the respondent no. company contended that the petitioner was engaged through the respondent no.2 contractor under the provisions of Contract Labour Act. He further contended that there was no relationship of employer and employee between the parties and the respondent no.1 had availed the services of the petitioner through the contractor.

11. The petitioner has appeared into the witness box as PW-1, and tendered in evidence his affidavit wherein he supported almost all the averment as stated in the claim petition. In cross-examination, he denied that prior to his engagement, the work of cleaning was being executed by Himachal Security Services. He further denied that he was deputed by Shri I.K Bali respondent no.2 with respondent no.1 for work. He expressed his ignorance that the wages, ESI and PF were being paid to him by the contractor. He denied that the employment card has been issued by the contractor to him. He further denied that his work was being supervised by the supervisor of respondent no. 2.

12. On the contrary, the respondent no.1 examined one Shri M.S Gupta, General Manager, who tendered in evidence his affidavit Ex. RA wherein he supported almost all the contents as made in the reply. He also tendered in evidence copy of Board Resolution Ex. RA-1, agreements Ex. RB to Ex. RD, certificate of registration Ex. RE, letter dated 1.6.2007 Ex. RF, agreement dated 14.6.2007 Ex. RG, licence Ex. RH, letter dated 14.1.2008 Ex. RJ and reply to demand notice Ex. RK. In cross-examination, he stated that neither the petitioner was his employee nor he was transferred by them. He denied that on 9.1.2004, Bali was not their contractor but admitted that first agreement was executed on 14.10.2000. He denied that the registration certificate and licence were issued only for the purpose of loading and unloading and that the agreements Ex. RB to RD have been fabricated. He further denied that the work was being taken by the company from workers and that the salary to them was also being paid by the company. He denied that they have no registration certificate to engage contract labour w.e.f. 2000 and that the services of contractor I.K Bali was engaged w.e.f. 1.4.2007 to 31.3.2009. He also denied that the services of the petitioner had been terminated by the company.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the petitioner had worked as safai karamchari in the industrial establishment of respondent no.1 company. Now, the question which arises for consideration before this Court is as to whether the petitioner was the employee of respondent no.1 or that or respondent no.2. As per the provisions of section 7 & 12 of the Contract Labour (Regulation and Abolition) Act, the principal employer i.e respondent no.1 (company) should have a certificate of registration from the prescribed authority to engage the contract labour and secondly the contractor i.e respondent no.2 should have a licence issued by competent authority to provide the contract labour. The respondent no.1 has placed on record the copy of the registration certificate Ex. RX issued in its favour to engage the contract labour and the copy of the licence Ex. RH issued in favour of respondent no.2 (contractor) to provide the contract labour by the competent authority. It is not in dispute that the employment of contract labour in respondent no.1 company has not been prohibited by the appropriate government as provided under section 10 of the Contract Labour Act. RW-1 had also tendered in evidence the copies of the agreements Ex. RB to Ex. RD, executed between respondent no.1 and respondent no.2. From the perusal of the aforesaid agreements, it has become clear that the work of housekeeping/cleaning was allotted by respondent no.1 to respondent no.2. The petitioner has failed to place on record any appointment letter or any other document to show that he was engaged by respondent no.1 company at any point of time. Therefore, in view of the overvelming evidence on record led by respondent no.1, it has become clear that the petitioner was not the employee of respondent no.1 company and he was the employee of respondent no.2 contractor who had deputed him with respondent no.1 under the Contract Labour Act. Hence, it has been established on record that there is no relationship of employee and employer between the petitioner and respondent no.1 company.

14. Now, the next question which arises for consideration before this Court is as to whether the contract was sham, ingeniune and camouflage as contended by the AR for the petitioner. It is by now well settled that if the industrial adjudicator finds the contract between the principal employer and the contractor to be a sham, nominal and a camouflage to deny employment

benefits to the employee, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. **In (2009) 13 SCC titled as International Airport Authority of India Vs. International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court as under:

> "36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.
>
> 37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification under section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise.

In the aforesaid judgment, the Hon'ble Supreme Court also explained the terms "control" and "supervision" which reads as under:

> "38.The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.
>
> 39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."
>
> 53.13…… Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.
>
> 54. ……..Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer."

15. In the back-ground of the aforesaid legal position, it was for the petitioner to prove that he was working under the direct control & supervision of the official of the respondent no.1 company and the contract was sham, ingenuine and camouflage for all purposes. However, except for the bald statement of the petitioner, there is no other evidence on record to suggest that he was doing the work under the direct supervision of the officials of the company and that the contract was sham, ingenuine, camouflage for all purposes. Moreover, no evidence has been led by the petitioner to show that initially he was engaged by the respondent no.1 directly and thereafter his services were illegally transferred and shown on the rolls of the contractor.

16. Hence, in view of the evidence led by the parties, it cannot be said that the petitioner was the direct employee of the respondent no.1 and the contract between the company and contractor is sham, ingenuine and camouflage for all purposes and as such it has been established that there is no relationship of employer and employee between the petitioner and respondent no.1 company.

17. Since, it has been established on record that the petitioner was the employee of respondent no.2 contractor, now, it has to be seen as to whether the services of the petitioner had been illegally terminated by the respondent no.2. Before, I proceed further it is relevant to mention here that after receiving the reference by this Court, notices were issued to both the respondents but none appeared on behalf of the respondent no.2 Contractor despite having been served, hence, he was proceeded against ex-parte vide order dated 19.4.2010. The petitioner in his claim petition as well as in his affidavit by way of evidence has stated as PW-1 that he was engaged as safai karamchari on 26.6.2000 and worked as such till 2.7.2007. He also tendered in evidence the copy of reply dated 13.9.2007, Ex. PA, filed by respondent no.2 before the Labour-cum-Conciliation Officer to the demand notice raised by him wherein the respondent no.2 had admitted that the petitioner was on their muster roll w.e.f. 8.6.2001 to November, 2001 and then April, 2002 to 30.6.2007 with a break in service w.e.f. 3.5.2007 to 13.5.2007. Therefore, from the perusal of the aforesaid reply of respondent no.2 Ex. PA, it has become clear that the petitioner had completed 240 days in twelve calendar months preceding his termination. Hence, before terminating the services of the petitioner, it was incumbent upon the respondent no.2 to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. It has been held by our own Hon'ble High Court in **Latest HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal** that the settled law in counting 240 days is that the same has to be calculated preceding the date of retrenchment during twelve calendar months and not a year. The relevant extract of the aforesaid judgment is reproduced as under:

> "2**.** I have perused the record and heard the parties. The Labour Court has come to the right conclusion that the workman could not be retrenched without complying with Section 25-F of the Industrial Disputes Act, 1947. Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year."

In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana), the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

> "16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an

employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity……..."

18. Therefore, in view of the unrebutted testimony of the petitioner and also in view of the reply of respondent no.2 Ex. PA, to the demand notice, it has been established that the petitioner had worked continuously for more than 240 days in twelve calendar months preceding his termination as such the respondent no.2 was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating his services. But, no such compliance was made by the respondent no.2 contractor, hence, there is violation of section 25-F of the Act, on the part of respondent no.2 contractor. As a result, the termination of petitioner *w.e.f.* 2.7.2007 is not sustainable in the eyes of law and is hereby set aside. Accordingly, this issue is decided in favour of petitioner and against respondent no.2 contractor.

Issue no. 2.

19. Since, I have held under issue no. 1 above, that the termination of the services of the petitioner w.e.f. 2.7.2007 by respondent no.2 without complying with the provisions of the Act is not legal and justified, hence, the question arises as to what service benefits, the petitioner is entitled. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC,** has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

20. **In Jagbir Singh Vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327, the Hon'ble Supreme Court** has held that:

"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

21. In the present case, even though the termination of the petitioner is held to be illegal but his reinstatement will not be appropriate relief in view of the fact that the contract between respondent no.1 and respondent no.2 had been terminated by the company vide letter Ex. RF and thereafter, respondent no.1 company has allotted the work of housekeeping to M/s Silver Star Industries and Allied Services, Chandigarh by executing an agreement. Therefore, in such a situation, it would not be appropriate to make the order of reinstatement in the present case. Hence, taking into account all the facts and circumstances of the case, the ends of justice would be met, if

the lump sum compensation in lieu of reinstatement and back-wages is awarded to the petitioner. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent no.2 Contractor and keeping in view the facts and circumstances of the case, it would be quite reasonable and justified if lump sum compensation of ₹ 25,000/- (₹ Twenty Five Thousand only) is awarded to the petitioner instead of reinstatement. Consequently, this issue is decided in favour of the petitioner and against respondent no.2 Contractor.

Issue no. 3.

22. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent no.2 Contractor is directed to pay ₹ 25,000/- (₹ Twenty Five Thousand only) as lump sum compensation to the petitioner within three months from today failing which the same shall carry interest @ 9% per annum from the date of publication of this award. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 4th Day of June, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA.

Ref no. : 32 of 2009.

Instituted on : 27.4.2009.

Decided on : 4.6.2016.

Manjeet Singh S/o Shri Pritam Dass C/o Chamela Halwai, Chowk Bazar Solan through Shri J.C Bhardwaj, President HPAITUC Hq. Saproon Solan, HP. ...*Petitioner*

VS.

3. The Vice President M/s Himachal Futuristic Communications Ltd., (Wireless Division) 8, Electronics Complex Chambaghat District Solan, HP.

4. I.K Bali, Contractor C/o M/s Himachal Futuristic Communications Ltd., (Wireless Division) 8, Electronics Complex Chambaghat District Solan, HP. ...*Respondents*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner	:	Shri J.C Bhardwaj, AR
For respondent no.1	:	Shri Rahul Mahajan, Advocate.
For respondent no.2	:	Ex-parte.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"***Whether the termination of the services of Shri Manjeet Singh S/o Shri Pritam Dass workman by the i)*** **the Vice President M/s Himachal Futuristic Communications Ltd., (Wireless Division) 8, Electronics Complex Chambaghat District Solan, HP ii) I.K Bali, Contractor C/o M/s Himachal Futuristic Communications Ltd., (Wireless Division) 8, Electronics Complex Chambaghat District Solan, HP w.e.f. 2.7.2007 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, seniority and amount of compensation the above aggrieved workman is entitled to*?"***

2. Facts, in brief are that initially the petitioner was engaged by the respondent no.1 directly on 9.1.2004 as a safai karmchari (sweeper) and he worked as such in the administrative department to carry on every type of cleaning works till his termination on 2.7.2007. The work assigned to the petitioner is directly related to the respondent no.1 but after some time his services were transferred illegally and shown on the rolls of the contractor *i.e* respondent no.2 without taking any consent or option from the petitioner just to evade liability. It is further stated that the petitioner did not complain regarding his transfer from the rolls of the company to the roll of the contractor due to the reason that he was threatened termination whereas the nature of work and place of working remained the same on which he was working earlier since his initial appointment. Since the cleanliness of the company is an essential and fore most work and it cannot be called a temporary or casual work, hence, the contract works are the out-come of sham and genuine contracts and contractors are only name sake and name lender only. The respondent no.1 exercised full administrative and financial control and as such there was relationship of master and servant between the petitioner and respondent no.1 and the activity of cleaning always remained regular. It is also stated that as per section 10 of the Contract Regulation and Abolition Act, 1970, the perennial nature of work is prohibited to be taken through contractors, hence principal employer is under statutory obligation to carry on the employment of sweepers on permanent roll of the company and as such the services of the petitioner at later stage shown on the rolls of the contractor is a camouflage sham and in genuine. Even, no notice of change in service had been served upon the petitioner. The petitioner had completed 240 days in the employment of the respondents and as such he was in continuous service for the purpose of section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) and the respondent while removing the petitioner from employment has committed many illegalities against the set norms and even no notice under section 25-N/25-F of the Act was served upon him before terminating his services. It is stated that the work and conduct of the petitioner was more than satisfactory and non-stigmatic in all respects as he was neither served any explanation call, show cause notice, warning, chargesheet nor subjected to any domestic enquiry. Against this back-drop, the petitioner prayed that he be held the workman of the respondent company and he be reinstated on the same post and work in the employment of respondent no.1 since the date of his termination i.e from 2.7.2007 with full back-wages, seniority and other incidental service benefits along-with costs.

3. By filing separate reply, the respondent no.1 contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and there was no employee and employer relationship between the petitioner and respondent no.1. On merits, it has been asserted that the petitioner was a contract labour, who had been deputed by Himachal Security Services, Salogra with the industrial establishment of respondent as safai karamchari (sweeper) in terms of agreements executed between respondent company and Himachal Security Service, Salogra Himachal Pradesh for providing of work force as agreed in terms of the contract which were extended from time to time. It is further submitted that the respondent no.1 had a valid licence and were authorized to engage and provide contract labour i.e safai karmachari for cleaning. Being the employer of the petitioner, the attendance, salary, payment of provident fund under the EPF & MP Act and ESI Act, 1948 and all other statutory compliance was done by the contractor and engaging of contract labour for general cleaning/safai karamchari is not prohibited under section 10 of the Contract Labour & Abolition Act, 1970. From the very beginning, the petitioner was the worker of contractor and not of the respondent company and he was doing the work of safai karamchari in the industrial establishment of respondent company on being deployed by contractor, hence, there is no violation of labour legislation. Since, the petitioner was the employee of contractor i.e respondent no.2 and as such the respondent no.1 is not responsible to pay him all statutory benefits under the law. Hence, respondent no.1 prayed for the dismissal of the petition.

4. Before, I proceed further, it is important to point out here that after havingn been duly served, the respondent no.2 (contractor) had appeared in person on 10.3.2011 but thereafter he failed to appear before this Court, hence, he was proceeded against ex-parte on 19.4.2011.

5. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

6. On the pleadings of the parties, the following issues were framed on 8.4.2010.

5. Whether the services of the petitioner have been terminated illegally and in an unjustified manner? ...*OPP.*

6. If issue no.1 is proved in affirmative, to what service benefits and compensation the petitioner is entitled to? ...*OPP.*

7. Whether the claim petition is not maintainable in view of preliminary objection?...*OPR.*

8. Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to lump sum compensation from respondent no.2 (contractor).
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent no.2 (contractor) per operative part of award.

Reasons for findings.

Issue no.1

9. The AR appearing on behalf of the petitioner contended that initially the services of the petitioner, as safai karamchari, have been engaged by the respondent no.1 company but lateron he has been shown engaged through respondent no.2, contractor. He further contended that the services of the petitioner were terminated illegally without following the mandatory provisions of the Act as neither any notice was served upon him nor any enquiry was conducted against him. He also contended that there is no contract between the respondent company and so called contract to engage the workers through contractor is sham, ingenuine and camouflage for all purposes and since the petitioner had completed 240 working days in each calendar year preceding his termination as such his termination without the compliance of the provisions of the Act is illegal and unjustified.

10. On the other hand, the learned counsel for the respondent no. company contended that the petitioner was engaged through the respondent no.2 contractor under the provisions of Contract Labour Act. He further contended that there was no relationship of employer and employee between the parties and the respondent no.1 had availed the services of the petitioner through the contractor.

11. The petitioner has appeared into the witness box as PW-1, and tendered in evidence his affidavit wherein he supported almost all the averment as stated in the claim petition. In cross-examination, he denied that prior to his engagement, the work of cleaning was being executed by Himachal Security Services. He further denied that he was deputed by Shri I.K Bali respondent no.2 with respondent no.1 for work. He expressed his ignorance that the wages, ESI and PF were being paid to him by the contractor. He denied that the employment card has been issued by the contractor to him. He further denied that his work was being supervised by the supervisor of respondent no.2.

12. On the contrary, the respondent no.1 examined one Shri M.S Gupta, General Manager, who tendered in evidence his affidavit Ex. RA on 5.3.2013 wherein he supported almost all the contents as made in the reply. He also tendered in evidence copy of Board Resolution Ex. RA-1, agreements Ex. RB to Ex. RD, certificate of registration Ex. RE, letter dated 1.6.2007 Ex. RF, agreement dated 14.6.2007 Ex. RG, licence Ex. RH, letter dated 14.1.2008 Ex. RJ and reply to demand notice Ex. RK. In cross-examination, he stated that neither the petitioner was his employee nor he was transferred by them. He denied that on 9.1.2004, Bali was not their contractor but admitted that first agreement was executed on 14.10.2000. He denied that the registration certificate and licence were issued only for the purpose of loading and unloading and that the agreements Ex. RB to RD have been fabricated. He further denied that the work was being taken by the company from workers and that the salary to them was also being paid by the company. He denied that they have no registration certificate to engage contract labour *w.e.f.* 2000 and that the services of contractor I.K Bali was engaged *w.e.f.* 1.4.2007 to 31.3.2009. He also denied that the services of the petitioner had been terminated by the company.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the petitioner had worked as safai karamchari in the industrial establishment of respondent no.1 company. Now, the question which arises for consideration before this Court is as to whether the petitioner was the employee of respondent no.1 or that or respondent no.2. As per the provisions of section 7 & 12 of the Contract Labour (Regulation and Abolition) Act, the principal employer i.e respondent no.1 (company) should have a certificate of registration from the prescribed authority to engage the contract labour and secondly the contractor

i.e respondent no.2 should have a licence issued by competent authority to provide the contract labour. The respondent no.1 has placed on record the copy of the registration certificate Ex. RX issued in its favour to engage the contract labour and the copy of the licence Ex. RH issued in favour of respondent no.2 (contractor) to provide the contract labour by the competent authority. It is not in dispute that the employment of contract labour in respondent no.1 company has not been prohibited by the appropriate government as provided under section 10 of the Contract Labour Act. RW-1 had also tendered in evidence the copies of the agreements Ex. RB to Ex. RD, executed between respondent no.1 and respondent no.2. From the perusal of the aforesaid agreements, it has become clear that the work of housekeeping/cleaning was allotted by respondent no.1 to respondent no.2. The petitioner has failed to place on record any appointment letter or any other document to show that he was engaged by respondent no.1 company at any point of time. Therefore, in view of the overvelming evidence on record led by respondent no.1, it has become clear that the petitioner was not the employee of respondent no.1 company and he was the employee of respondent no.2 contractor who had deputed him with respondent no.1 under the Contract Labour Act. Hence, it has been established on record that there is no relationship of employee and employer between the petitioner and respondent no.1 company.

14. Now, the next question which arises for consideration before this Court is as to whether the contract was sham, ingeniune and camouflage as contended by the AR for the petitioner. It is by now well settled that if the industrial adjudicator finds the contract between the principal employer and the contractor to be a sham, nominal and a camouflage to deny employment benefits to the employee, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. **In (2009) 13 SCC titled as International Airport Authority of India Vs. International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court as under:

> "36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.
>
> 37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification under section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise.

In the aforesaid judgment, the Hon'ble Supreme Court also explained the terms "control" and "supervision" which reads as under:

> "38.The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the

directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

53.13…… Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.

54. ……..Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer."

15. In the back-ground of the aforesaid legal position, it was for the petitioner to prove that he was working under the direct control & supervision of the official of the respondent no.1 company and the contract was sham, ingenuine and camouflage for all purposes. However, except for the bald statement of the petitioner, there is no other evidence on record to suggest that he was doing the work under the direct supervision of the officials of the company and that the contract was sham, ingenuine, camouflage for all purposes. Moreover, no evidence has been led by the petitioner to show that initially he was engaged by the respondent no.1 directly and thereafter his services were illegally transferred and shown on the rolls of the contractor.

16. Hence, in view of the evidence led by the parties, it cannot be said that the petitioner was the direct employee of the respondent no.1 and the contract between the company and contractor is sham, ingenuine and camouflage for all purposes and as such it has been established that there is no relationship of employer and employee between the petitioner and respondent no.1 company.

17. Since, it has been established on record that the petitioner was the employee of respondent no.2 contractor, now, it has to be seen as to whether the services of the petitioner had been illegally terminated by the respondent no.2. Before, I proceed further it is relevant to mention here that after receiving the reference by this Court, notices were issued to both the respondents but none appeared on behalf of the respondent no.2 Contractor despite having been served, hence, he was proceeded against ex-parte vide order dated 19.4.2010. The petitioner in his claim petition as well as in his affidavit by way of evidence has stated as PW-1 that he was engaged as safai karamchari on 9.1.2004 and worked as such till 2.7.2007. He also tendered in evidence the copy of reply dated 13.9.2007, Ex. PA, filed by respondent no.2 before the Labour-cum-Conciliation Officer to the demand notice raised by him wherein the respondent no.2 had admitted that the petitioner was on their muster roll w.e.f. 9.6.2004 till 30.6.2007 with a break in service w.e.f. 3.5.2007 to 13.5.2007. Therefore, from the perusal of the aforesaid reply of respondent no.2 Ex. PA, it has become clear that the petitioner had completed 240 days in twelve calendar months preceding his termination. Hence, before terminating the services of the petitioner, it was

incumbent upon the respondent no.2 to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. It has been held by our own Hon'ble High Court in **Latest HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal** that the settled law in counting 240 days is that the same has to be calculated preceding the date of retrenchment during twelve calendar months and not a year. The relevant extract of the aforesaid judgment is reproduced as under:

> "2**.** I have perused the record and heard the parties. The Labour Court has come to the right conclusion that the workman could not be retrenched without complying with Section 25-F of the Industrial Disputes Act, 1947. Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year."

In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana), the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25- F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

> "16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.
>
> 17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity……..."

18. Therefore, in view of the unrebutted testimony of the petitioner and also in view of the reply of respondent no.2 Ex. PA, to the demand notice, it has been established that the petitioner had worked continuously for more than 240 days in twelve calendar months preceding his termination as such the respondent no.2 was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating his services. But, no such compliance was made by the respondent no.2 contractor, hence, there is violation of section 25-F of the Act, on the part of respondent no.2 contractor. As a result, the termination of petitioner w.e.f. 2.7.2007 is not sustainable in the eyes of law and is hereby set aside. Accordingly, this issue is decided in favour of petitioner and against respondent no.2 contractor.

Issue no. 2.

19. Since, I have held under issue no. 1 above, that the termination of the services of the petitioner w.e.f. 2.7.2007 by respondent no.2 without complying with the provisions of the Act is not legal and justified, hence, the question arises as to what service benefits, the petitioner is entitled. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC,** has held that relief by

way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

20. **In Jagbir Singh Vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327, the Hon'ble Supreme Court** has held that:

> "It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

21. In the present case, even though the termination of the petitioner is held to be illegal but his reinstatement will not be appropriate relief in view of the fact that the contract between respondent no.1 and respondent no.2 had been terminated by the company vide letter Ex. RF and thereafter, respondent no.1 company has allotted the work of housekeeping to M/s Silver Star Industries and Allied Services, Chandigarh by executing an agreement. Therefore, in such a situation, it would not be appropriate to make the order of reinstatement in the present case. Hence, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump sum compensation in lieu of reinstatement and back-wages is awarded to the petitioner. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent no.2 Contractor and keeping in view the facts and circumstances of the case, it would be quite reasonable and justified if lump sum compensation of ₹ 25,000/- (₹Twenty Five Thousand only) is awarded to the petitioner instead of reinstatement. Consequently, this issue is decided in favour of the petitioner and against respondent no.2 Contractor.

Issue no. 3.

22. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent no.2 Contractor is directed to pay ₹ 25,000/- (₹ Twenty Five Thousand only) as lump sum compensation to the petitioner within three months from today failing which the same shall carry interest @ 9% per annum from the date of publication of this award. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 4th Day of June, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Application No. : 92 of 2014.

Instituted on. : 4.12.2014.

Decided on : 17.6.2016.

Balbir Singh S/o Shri Devi Ram R/o VPO Himri, Tehsil Sunni, District Shimla, HP.
. .*Petitioner.*

Vs.

1. The Executive Engineer, HPPWD Division Kumarsain, Tehsil Kumarsain, District Shimla, HP.

2. The Executive Engineer, HPPWD, Division Shimla (Rural) at Dhami, Sub Tehsil Dhami, District Shimla, HP.

3. The Sub Divisional Officer, HPPWD, Sub Division, Jalog, Tehsil Sunni, District Shimla, HP.

4. The Sub Divisional Officer, HPPWD, Sub Division, Sunni, Tehsil Sunni, District Shimla, HP. ...*Respondent*

Claim petition on behalf of the petitioner in terms of reference no. 15 of 2004.

For petitioner : Shri Neel Kamal Sood, Advocate.

For respondent **:** Shri H.N Kashyap, ADA.

ORDER/AWARD

Briefly, the case of the petitioner is that initially w.e.f. 1.4.1991, he was engaged as beldar on daily wages basis by the respondents department in the office of respondent no.2, where he worked w.e.f. 1.4.1991 till 31.12.1997 and thereafter, his services were ordered to be transferred to the office of respondent no.3 and he joined on 1.1.1998 but on 8.5.1998, the services of the petitioner had been terminated by the respondents in an illegal manner. The seniority of daily waged employees is maintained at Divisional level and the services of daily waged employee can be transferred from one Sub Division to another, under the same Division keeping in view the rules and guidelines meant for such workers. It is further stated that the petitioner kept on visiting the offices of the respondents department and made various requests for his re-engagement but his services had not been re-engaged despite the fact that juniors/similarly situated persons have been retained. The petitioner had completed 240 days in each calendar year but his services had been terminated without serving prior notice upon him. Thereafter, the petitioner approached the Administrative Tribunal and filed OA no. 1254/1999 which was dismissed on 25.3.2002 on the point of jurisdiction and then the petitioner filed a demand notice before the Labour & Conciliation Officer Shimla but due to unreasoned attitude of the respondents, the conciliation failed and the appropriate government has referred the dispute for adjudication which reads as under:

"Whether the termination of services of Shri Balbir Singh S/o Shri Devi Ram, daily wages beldar by the Executive Engineer, HPPWD Kumarsain, District Shimla w.e.f.

8.5.1998 without complying with the provisions of the Industrial Disputes Act, 1947 and whereas junior to him are retained as alleged by the workman is proper and justified? If not, what relief of service benefits the above aggrieved workman is entitled to?"

The petitioner had put in more than 7 years of service *w.e.f.* 1.4.1991 till 8.5.1998 and was expecting for his regularization as per the policy of the state government but his services were terminated on 8th May, 1998 without complying with the well settled provision of law and even there are so many persons juniors to the petitioner namely Khem Raj, Nirma Dass etc. (as mentioned in para (ii) of the claim petition), who are still continuing with the respondents department. It is further stated that the petitioner had earlier filed a claim petition before this Court in June, 2004 registered as Reference no. 15/2004 which was dismissed on 20.6.2009 and thereafter a writ petition had been filed by the petitioner i.e CWP No. 2565/2009 before the Hon'ble High Court of HP which was decided against the petitioner vide order dated 3.7.2012, and then the petitioner filed LPA no. 527 of 2012, which was decided on 20.10.2014 wherein the Hon'ble High Court had permitted the petitioner to approach the Labour Court afresh as prayed for. Thereafter, the present application has been filed by the petitioner with a prayer for his re-instatement with all the consequential service benefits.

2. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and that no cause of action has accrued in favour of the petitioner in any manner. On merits, it has been denied that initially the petitioner was engaged on daily wage basis w.e.f. 1.4.1991 with the respondent no.2 and that he worked w.e.f. 1.4.1991 till 31.12.1997. The services of the petitioner had been engaged on daily wage basis for seasonal work as per the availability of work and funds and upon completion of his services, he stood disengaged orally as he failed to fulfill the legal requirements of section 25-B of the Act. It is asserted that the petitioner was engaged only during November, 1997 and he never remained as continuous worker and had not completed 240 days in any year. It is denied that after the disengagement of the petitioner, his juniors have been retained and fresh persons were being engaged by the department from time to time. The petitioner had abandoned the job at his own and he never approached the department for his reengagement. The respondents prayed for the dismissal of the claim petition.

3. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

4. Pleadings of the parties gave rise to the following issues which were struck on 18.11.2015.

5. Whether the termination of the services of the petitioner *w.e.f.* 8.5.1998, is in violation of the provisions of the Industrial Disputes Act, 1947 as alleged? ...*OPP.*

6. If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? ...*OPP.*

7. Whether the petition is not maintainable as alleged? ...*OPR.*

8. Whether there is no cause of action in favour of the petitioner as alleged? ...*OPR.*

9. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement with seniority and continuity w.e.f. 8.5.1998 but without back-wages.
Issue no.3	No.
Issue no.4	No.
Relief.	Petition allowed per operative part of award/order.

Reasons for findings

Issue no.1 .

7. The learned counsel for the petitioner has argued with vehemence that the services of the petitioner had been terminated illegally without following the mandatory provisions of the Act. He further contended that since, the petitioner had completed 240 days in each calendar year, his termination without notice and compensation is against the provisions of the Act and even junior to him are still working with the respondents and fresh persons have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

8. On the other hand, Ld. ADA for respondents contended that the services of the petitioner had been engaged for specific work and on the completion of said work, his services stood automatically came to an end. He further contended that the petitioner had never completed 240 days in any calendar year and no junior to him had been retained/engaged by the respondents and even the petitioner himself is responsible for losing his job as he left the work at his own without any intimation to the department.

9. To prove his case, the petitioner himself appeared into the witness box as PW- 1 and deposed that he was engaged as beldar in HPPWD Division Kumarsain on 1.4.1991 and worked till December, 1997 and thereafter he was sent to Sub Division Sunni where he worked *w.e.f.* 1.1.1998 to 6.5.1998. He had completed 240 days in each calendar year. His services were terminated without serving any notice as required under the law and without payment of any compensation. His juniors have been retained. Vide judgment Ex. PW-1A he was given liberty to approach this Court afresh and Ex. PW-1B is the copy of order passed in OA decided on 25.3.2002 and thereafter he raised demand notice and the reference was decided against him by this Court vide award Ex. PW-1/C. The copy of judgment passed by the Hon'ble High Court in writ petition is Ex, PW-1/D. Thereafter, he filed LPA no. 527/2012 which was decided on 20.10.2014. He prayed for his re-instatement in service including all consequential benefits. In cross-examination, he denied that he was engaged in the year, 1997/1998. He further denied that he had not completed 240 days in each calendar year and that he had abandoned the job voluntarily. He admitted that he had worked for 34 days in 1997 and 137 days in 1998. He denied that he had not approached the department for his re-engagement and that no juniors were retained by the department.

10. PW-2 Shri Nikka Ram has stated that as per the record the petitioner was initially engaged in the year, 1993 and the information supplied under the RTI Act Ex. PW-2/A is correct and Ex. PW-2/B is the list of the date of engagement of the persons junior to the petitioner. In cross-examination, he admitted that the persons mentioned in the list Ex. PW-2/B have been regularized as they have fulfilled all the criteria. He admitted that the services of the petitioner were never taken after June, 1993 and before November, 1997.

11. On the other hand, the respondents has examined RW-1 Shri Rajeev Shaunak, who tendered in evidence his affidavit Ex. RW-1/A, wherein he reiterated almost all the averments as stated in the reply. He also tendered in evidence mandays chart of petitioner Ex. RW-1/B, mandays chart of Tikkam Dass, Ex. RW-1/C, mandays chart of Narain Singh Ex. RW-1/D, mandays chart of Laiq Ram, Ex. RW-1/E, mandays chart of Khem Raj Ex. RW-1/F, mandays chart of Khem Chand Ex. RW-1/G, mandays chart of Nirma Dass Ex. RW-1/H, copies of orders passed by Administrative Tribunal Ex. RW-1/J & RW-1/K, copy of order dated 27.12.1999 Ex. RW-1/L, copy of order dated 26.6.2009 Ex. RW-1/M, copy of order dated 3.7.2012 passed by the Hon'ble High Court Ex. RW-1/N and copy of order passed in LPA no. 527/2012 Ex. RW-1/O. In cross-examination, he denied that the petitioner had worked with the department in the year, 1991. He admitted that neither any notice of termination was served upon the petitioner nor any compensation in lieu thereof was paid to him. He admitted that S/Shri Inder Dass, Narain Singh, Laiq Ram, Khem Chand, Khem Raj and Nirma Dass were appointed in the year, 1997 and that the persons shown in Ex. RW-1/C to Ex. RW-1/H were appointed in the year, 1997. He also admitted that all the juniors as per Ex. PX have been regularized as per government policy.

12. Before, I proceed further, it is important to mention here that earlier the petitioner had filed a claim petition before this Court pursuant to reference sent by the appropriate government which was dismissed by this Court vide award dated 20.6.2009, the copy of which is Ex. PW-1/C. Thereafter, the petitioner filed a Civil Writ Petition no. 2565 of 2009, before the Hon'ble, High Court which was also dismissed vide order dated 3.7.2012, the copy of which is Ex. PW-1/D. Admittedly, then the petitioner filed LPA no. 527 of 2012 before the Hon'ble High Court of HP which was disposed of on 20.10.2014, wherein the Hon'ble High Court has observed as follows:

> **"3. Keeping in view the dispute involved read with the fact that the laws applicable to the workmen are beneficial legislations, we deem it proper to permit the appellant-writ petitioner to withdraw the appeal as well as the writ petition with liberty to approach the Labour Court afresh enabling him to take all grounds, which are as weapon in his armoury.**
>
> **4. It goes without saying that the time spent right from the Labour Court till today shall not come in the way of the appellant-writ petitioner provided he approaches the Labour Court within one month from today.**
>
> **5. Having said so, the appeal as well as the writ petition is dismissed as withdrawn with liberty as prayed for. It is made clear that in the given circumstances, the award made by the Labour Court and judgment made by the Writ Court lose efficacy.**

Consequent upon the order passed by the Hon'ble High Court (supra), the petitioner has filed the present petition.

13. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner had worked as daily waged beldar with the respondents department. RW-1 Shri Rajeev Shaunak has placed on record the mandays chart of the petitioner Ex. RW-1/B which goes to show that in the year 1997 the petitioner had worked only for 34 days and in the year, he worked for 137 days. No doubt the petitioner has stated as PW-1 that he was engaged as beldar in HPPWD Division Kumarsain, Sub Division Jalog on 1.4.1991 but he has failed to place on record any material which could go to show that the petitioner was engaged on 1.4.1991. At the same time, the petitioner has examined PW-2 Shri Nikka Ram, Clerk from the office of HPPWD Kumarsain, who has stated on the basis of record that initially the petitioner was engaged in the year, 1993. This witness has also placed on record the certified copies of muster roll Ex. PW-2/A supplied under RTI Act. The perusal of Ex. PW-2/A goes to show that initially the

muster roll had been issued in favour of the petitioner for the month of May, 1993 which fact has also been admitted by RW-1 in his cross-examination that the petitioner was engaged in the year, 1993. RW-1 also admitted in his affidavit Ex. RW-1/A, the petitioner had worked with Sub Division Jalog for 22 and 18 days during the months of May & June, 1993 respectively.Thus, from the oral as well as documentary evidence, on record, it has been established that initially the services of the petitioner had been engaged by the respondents department in the month of May, 1993. The case of the petitioner is also that he had worked with the respondent till December, 1997 and completed 240 working days in every calendar year and also in twelve calendar months preceding his termination but when regard is given to entire evidence on record, except for the bald statement of the petitioner there is nothing on record which could show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. It is by now well settled that the burden of proof lies on the workman to show that he had worked continuously for 240 days in twelve calendar months preceding his termination. In ***2009 (120) FLR 1007 in case titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others***, the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

14. In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:-

> ***"19…… In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he has actually worked with the employer for not less than 240 days during the period twelve calendar months preceding the date of termination. What we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer. Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service……"***

A bare perusal of the extract of the judgment produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged by the workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination.

15. From the perusal of mandays chart, Ex. RW-1/B, it is abundantly clear that the petitioner had not completed 240 working days in the calendar year preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner. Thus, having regard to the entire evidence on record and on the strength of the above cited rulings, it can safely be concluded that the petitioner has failed to prove on record that he has completed 240 working days in twelve calendar months preceding his termination.

16. The respondents have also taken a plea that the petitioner had voluntarily left the job from the department. However, except for the bald statement of RW-1, there is nothing on record

which could go to show that the petitioner had abandoned the job at his own. Therefore, in the absence of any evidence on record it cannot be said that the petitioner had abandoned the job on his own.

17. The learned counsel for the petitioner next contended that the persons junior to the petitioner have been retained and fresh persons have been engaged after the termination of the services of the petitioner as such there is a breach of provisions of sections25-G and 25-H of the Act. It has been held by the Hon'ble Supreme Court in a series of judgments that it is not necessary for the workman to complete 240 days during preceding twelve calendar months for taking the benefits of section 25-G and 25-H of the Act. In the decision titled as **Harjinder Singh vs. Punjab State Warehousing Corporation, (2010) 3 SCC 192**, it was held by the Hon'ble Apex Court that for attracting the applicability of Section 25G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his services and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason. In the present case, it has been duly proved on record by the petitioner that the respondents had retained his juniors and engaged fresh persons after the termination of his services in violation of the provisions of section 25-G and 25-H of the Act. As observed earlier, from the perusal of the entire evidence on record, it is clear that the petitioner was initially engaged in the year, 1993. From the perusal of the list Ex. PW-2/B, it is revealed that 110 persons were engaged as beldars in Kumarsain Division w.e.f. 1.1.1997 and the services of these persons have been regularized as admitted by PW-2, in his cross-examination. RW-1 also admitted that S/Shri S/Shri Inder Dass, Narain Singh, Liaq Ram, Khem Chand, Khem Raj and Niram Dass as well as the persons shown in Ex. RW- 1/C to Ex. RW-1/H were appointed in the year, 1997. Furthermore, list Ex. PX is the detail of daily paid beldars engaged w.e.f. 1.1.1997 in respect of Kumarsain Division and in cross-examination RW-1 admitted that the aforesaid list Ex. PX is correct and he further admitted that all the juniors mentioned in Ex. PX have been regularized.

18. Therefore, from the perusal of the lists Ex. PW-2/B and Ex. PX, and having regard to entire evidence on record, I have no hesitation in coming to the conclusion that after the termination of the services of the petitioner, fresh persons have been engaged and juniors have been retained and regularized by the respondents whereas no opportunity was given to the petitioner at any point of time for re-employment before the engagement of the fresh persons and as such the termination of services of the petitioner by the respondents without complying with the provisions of the Act, is improper and unjustified as the respondent has violated the principle of "first come last go" thereby violating the provisions of sections 25-G & H of the Act. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

Issue no. 2.

19. Since I have held under issue no.1 above that the termination of services of the petitioner by the respondents without following the provisions of the Act is improper, illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity from the date of his illegal termination i.e w.e.f. 8.5.1998.

20. Now, the next question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble**

Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

21. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

22. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue no.3.

23. In support of this issue, no evidence has been led by the respondents. Moreover, I find nothing wrong with this petition which is perfectly maintainable. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

Issue no.4.

24. In support of this issue, the learned ADA has argued that since the claim of the petitioner has earlier been dismissed by this Court vide award dated 20.6.2009, hence, there is no cause of action in his favour. However, as the petitioner has filed the present petition consequent upon the order passed by the Hon'ble High Court of HP in LPA no. 527 of 2102, wherein, he had been directed to approach this Court afresh, hence, it cannot be said that there is no cause of action in favour of the petitioner. Hence, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity from the date of his illegal termination i.e w.e.f. 8.5.1998. However the petitioner is not entitled to back wages. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 17th Day of June, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

App. No. : 6 of 2012.

Instituted on. : 18.1.2012.

Decided on : 29.6.2016.

Vinod Kumar S/o Shri Sohan Singh Thakur R/o Village Trambla, P.O Longni, Tehsil Sarkaghat District Mandi HP C/o Om Dutt Sharma, VPO Taksal, Tehsil Kasauli, District Solan, HP. *.. Petitioner*

Vs.

General Manager/Factory Manager, Numeric Power System Ltd., Sector-II, Parwanoo, District Solan, HP. *...Respondent*

Claim petition under Section 2-A of the Industrial Disputes Act

For petitioner : Shri Niranjan Verma, Advocate.

For respondent : Shri Rahul Mahajan, Advocate.

ORDER/AWARD

In nutshell the case of the petitioner is that he had been working as an operator with the respondent since 20.9.2005 and was drawing monthly salary of ₹ 5900/-. The petitioner was working to the entire satisfaction of the respondent till 2.5.2008 and his services had been terminated illegally without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) w.e.f. 3.5.2008 and that too without affording any opportunity of being heard to him despite the fact that his juniors have been retained by the respondent. It is further stated that neither any notice was served nor any enquiry was conducted against the petitioner as he had completed 240 days in a calendar year and also in preceding years. It is also stated that the petitioner time and again requested/represented the respondent to set aside the illegal orders and to reinstate him in service but all in vain, hence, he filed the demand notice under section 2-A of the Act before the Labour –cum- Conciliation Officer which is still pending from 7.2.2010. Against this back-drop a prayer has been made for his reinstatement in service along-with all consequential service benefits including backwages.

2. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, there exists no industrial dispute as defined under section 2-k and that the petitioner is not a workman. On merits, it has been asserted that the petitioner was working as an operator with the respondent and drawing salary of ₹5900/- per month. It is denied that the services of the petitioner had been illegally and arbitrarily terminated w.e.f. 3.5.2008. In fact, the petitioner failed to report on duty w.e.f. 3.5.2008 and thereafter on 6.5.2008, he submitted his resignation, which was accepted by the respondent, hence, the relationship of employee and employer between the petitioner and respondent came to an end w.e.f. 6.5.2008. Thus, there exists no industrial dispute as the petitioner is not a workman. Since, the petitioner himself tendered his resignation on 6.5.2008, hence, there is no question of any opportunity of being heard given to him or violation of principles of natural justice. The respondent prayed for the dismissal of the petition.

3. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 26.6.2013.

1. Whether the services of the petitioner were terminated arbitrarily without notice and enquiry in illegal and unjustified manner as alleged? ... *OPP.*

2. If issue no.1 is proved in affirmative to what service benefits, the petitioner is entitled to? ...*OPP.*

3. Whether this petition is neither competent nor maintainable as alleged in preliminary objections no. 1 to 4? ...*OPR.*

4. Relief.

4. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

5. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to lump sum compensation.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings.

Issues no.1.

6. Ld. Counsel for petitioner contended that the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act. He further contended that before terminating the services of the petitioner, neither any notice was issued to him nor any enquiry was conducted against him and since the petitioner had completed 240 days in each calendar year, his termination without issuance of any notice and without payment of compensation is against the provisions of the Act.

7. On the other hand, learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent, who himself tendered his resignation which was duly accepted by the respondent. He further contended that all the outstanding dues of the petitioner have been paid to him.

8. To prove his case, the petitioner examined himself as PW-1 and deposed that he was appointed as an operator by the respondent on 20.9.2005 on monthly wages of ₹ 5900/- and he was terminated from service w.e.f. 3.5.2008 without any notice, compensation and enquiry whereas his juniors were retained by the company. In every calendar year, he had completed 240 days and he was terminated illegally. The copy of demand notice is Ex. PW-1/A and postal receipt of which is Ex. PW- 1/B and when no conciliation took place, he requested the Conciliation Officer vide Ex. PW-1/C to send the same to this Court. He is unemployed and requested the respondent for his re-

engagement but of no avail. Relieving certificate Ex. PW-1/D had been given to him after two years. He had not tendered his resignation. His behavior and performance was satisfactory vide Ex. PW-1/E and as such he may be reinstated in service with all consequential benefits including back-wages etc. In crossexamination, he denied that he was engaged as store assistant. He admitted that he was engaged on 20.9.2005. He admitted that vide Ex. R-1, he was engaged as store assistant. He denied that resignation letter mark X had been tendered by him. He admitted that in Ex. PW-1/D, it was mentioned that he had tendered his resignation but volunteered that the same had been written by the company. He admitted that he had received cheque, the copy of which is Ex. R-2 and E-mail Ex. R-3. He admitted that presently he is doing the job and getting ₹ 7,000/- per month as salary.

9. Before, I proceed further, it is important to mention here that the evidence of the petitioner was closed on 3.7.2014 and thereafter the case was being listed for the evidence of the respondent but despite affording various opportunities, the respondent failed to lead any evidence, hence, vide order dated 12.4.2016, the evidence of the respondent was closed by the order of the Court.

10. I have considered the respective contentions of the learned counsel for parties and also scrutinized the record of the case minutely.

11. After the closer scrutiny of the record of the case, it has become clear that the petitioner was engaged on 1.9.2005 by the respondent and was working as an operator and drawing salary of ₹5900/- per month and he worked as such till 3.5.2008. The only stand which has been taken by the respondent is to the effect that the petitioner had failed to report for duties w.e.f. 3.5.2008 and thereafter on 6.5.2008, he submitted his resignation. Therefore, it was for the respondent to prove that the petitioner had tendered his resignation on 6.5.2008. However, to prove this fact, no evidence has been led by the respondent. The respondent has only placed on record, the photocopies of the alleged resignation letter dated 6.5.2008, mark X letter dated 9.7.2010 allegedly written by the petitioner mark Y, letter dated 14.7.2010 mark Z and letter dated 11.8.2010 allegedly written by the respondent mark Z-1. The aforesaid letters were put to the petitioner in cross-examination. However, the petitioner has categorically denied that he had written the resignation letter mark X and letter dated 9.7.2010 mark Y. He also denied that the letters dated 14.7.2010 and 11.8.2010 mark Z and mark Z-1 were sent by the company to him. Therefore, in such a situation, it was for the respondent to prove the aforesaid letters in accordance with law. However, as observed earlier, no evidence has been led by the respondent to prove his case. Therefore, in the absence of any evidence on record, it cannot be said that the petitioner had submitted his resignation on 6.5.2008 and that his services were never terminated by the respondent.

12. Admittedly, the petitioner had worked with the respondent continuously *w.e.f.* 1.9.2005 to 3.5.2008 which fact has also been mentioned by the respondent in the relieving order Ex. PW-1/D. Therefore, it has become clear that the petitioner had completed more than 240 days in each calendar year preceding his termination. It has not been explained by the respondent as to why the relieving order Ex. PW-1/D was issued on 19.1.2010 when according to the respondent, the petitioner had submitted his resignation on 6.5.2008. Moreover, in the relieving order Ex. PW-1/D, it has been categorically mentioned that the petitioner has been relieved from his employment consequent to his resignation and unsatisfactory behavior. Admittedly, neither any enquiry was conducted nor any notice was issued to the petitioner regarding his unsatisfactory behavior. It is settled legal proposition that a workman, against whom misconduct is alleged, cannot be dismissed or discharged unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if there is proved misconduct against the workman, he cannot be dis-charged or dismissed from service unless he has been afforded reasonable opportunity of being heard before initiating any action against him by the employer/respondent. Since, the petitioner had completed 240 days in twelve calendar months preceding his termination, a reasonable opportunity of being

heard should have been afforded to him and proper enquiry should have been held before terminating his services. **In *D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments -221*, the Hon'ble Apex Court** has held as under:

> *"Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service."*

In a recent judgment of our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors.** the Hon'ble High Court has held that termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

> "8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:
>
> 9. ……..
>
> 10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.
>
> 11. ……..
>
> 12. …….
>
> 13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

Since, the petitioner had completed 240 working days in each calendar year preceding his termination, hence, before terminating his services, it was incumbent upon the respondent to have conducted the enquiry regarding his alleged un-satisfactory behavior. Moreover, the provisions of section 25-F of the Act lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'bel Apex Court has held as under:

> "34. …….The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."

13. In the present case also the respondent had not complied with the conditions precedent to the retrenchment as per section 25-F of the Act before terminating the services of the petitioner.

Hence, In view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner *w.e.f.* 3.5.2008 by the respondent without complying with the provisions of the Act, is illegal and unjustified. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

14. Since, I have held under issue no. 1 above, that the services of the petitioner were terminated arbitrarily without notice and enquiry in illegal and unjustified manner by the respondent, hence, the question arises as to what service benefits, the petitioner is entitled. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC,** has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

15. **In Jagbir Singh Vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327, the Hon'ble Supreme Court** has held that:

> "It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

16. In the present case, even though the termination of the petitioner is held to be illegal but his reinstatement will not be appropriate relief as it has been stated at bar by the learned counsel for the respondent that the respondent has closed its unit where the petitioner was working. Therefore, in such a situation, it would not be appropriate to make the order of reinstatement in the present case. Hence, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump sum compensation in lieu of reinstatement is awarded to the petitioner. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent and keeping in view the facts and circumstances of the case, it would be quite reasonable and justified if lump sum compensation of ₹ 50,000/- (₹ Fifty thousand only) is awarded to the petitioner instead of reinstatement. Consequently, this issue is decided in favour of the petitioner and against respondent.

Issue no.3.

17. In support of this issue, no evidence has been led by the respondent which could go to show that this petition is neither competent nor maintainable. Hence, in the absence of any evidence on record, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed with the result the respondent is directed to pay

₹ 50,000/- (₹ Fifty thousand only) as lump sum compensation to the petitioner within three months from today failing which the same shall carry interest @ 9% per annum from the date of publication of this order/award. Let a copy of this order/award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 29th day of June, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

3.6.2016.

Present: Shri R.K Khidtta, Advocate for petitioner.

Shri Rahul Mahajan, Advocate for respondent.

At this stage an application under section 151 CPC has been filed by the respondent/applicant for placing on record the settlement dated 29.4.2016 executed between the petitioner union and respondent. The learned counsel for the petitioner/non-applicant admits the execution of settlement dated 29.4.2016 between the parties.

Vide separate statement recorded today Shri Mata Ram Sharma, President of petitioner union has stated that the union had entered into settlement with the management of M/s Mahale Filters System India Pvt. Ltd. Parwanoo on 29.04.2016 in respect of the charter of demand raised vide demand notice dated 18.09.2013, which was referred for adjudication to this Court and registered as reference number 74 of 2014. He also placed on record the copy of settlement as Ex. C-1n and its Hindi version as Ex. C-2. Similarly, Ms. Shilpi Wadhwa, Head (HR) of respondent company also admitsthe aforesaid statement of Sh. Mata Ram Sharma, President of petitioner union.

Therefore, in view of the statements of the parties, since a settlement has been executed between the petitioner union and the respondent, the copy of which is placed on record as Ex. C-1 and its Hindi version as Ex. C-2, the present reference is answered in terms of aforesaid settlement which shall form a part of the award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File after completion, be consigned to records.

Announced:
3-6-2016

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

App.89/2014

27.06.2016

Present: Petitioner with Shri A.K. Sharma, AR for the petitioner.
Shri Vikram Bhojia, Secretary with Shri J.J.Lal, AR for respondent.

At this stage, it has been stated by Shri Vikram Bhojia, Secretary for the respondent college that the respondent is ready and willing to re-instate the petitioner in service as mazdoor along-with seniority and continuity in the campus of Bhojia Cheritable trust at Village Bhud, Tehsil Baddi, District Solan, HP. To this effect his statement recorded separately.

Vide separate statement, the petitioner also stated that he is also ready to work as a mazdoor with the respondent along-with seniority and continuity in service.

Since, the parties have settled the matter before this Court amicably, hence the petition filed under section 2-A of the Industrial Disputes Act, 2010 (amended) is disposed of in terms of the aforesaid settlement. The statement of the parties shall form a part of this order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced
27.6.2016.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

App.90/2014

27.06.2016

Present: Petitioner with Shri A.K. Sharma, AR for the petitioner.

Shri Vikram Bhojia, Secretary with Shri J.J.Lal, AR for, respondent.

At this stage, it has been stated by Shri Vikram Bhojia, Secretary for the respondent college that the respondent is ready and willing to re-instate the petitioner in service as mazdoor along-with seniority and continuity in the campus of Bhojia Cheritable trust at Village Bhud, Tehsil Baddi, District Solan, HP. To this effect his statement recorded separately.

Vide separate statement, the petitioner also stated that he is also ready to work as a mazdoor with the respondent along-with seniority and continuity in service.

Since, the parties have settled the matter before this Court amicably, hence the petition filed under section 2-A of the Industrial Disputes Act, 2010 (amended) is disposed of in terms of the aforesaid settlement. The statement of the parties shall form a part of this order. Let a copy of this

order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced
27.6.2016.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

22.6.2016.

Present: None for the petitioner.

Shri Vijay Sharma, Advocate vice csl. for respondent.

Case called twice but none appeared on behalf of the petitioner. It is 10:55 AM. Be called again.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called again

Present: None for the petitioner.

Shri Vijay Sharma, Advocate vice csl. for respondent.

It is 12:50 PM case called again but none appeared on behalf of the petitioner. Be called after lunch.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called after lunch.

Present: None for the petitioner.

Shri Vijay Sharma, Advocate vice csl. for respondent.

It is 3:35 PM. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of the petitioner.

For today this case was fixed for filing of claim but neither the petitioner nor his AR appeared before this Court in order to file claim petition despite the fact that this case is being listed for filing of claim from 24.8.2015 but till today the petitioner has failed to file any claim which goes to show that he is not interested to pursue his case and to file claim. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whatsoever available on the file. The following reference has been received from the appropriate government for adjudication:

"**Whether termination of services of Shri Ravinder Kumar S/o Shri Dayal Chand R/o VPO Bhardi, Tehsil Kumarsain, District Shimla, HP w.e.f. 11.6.2014 by the Managing Director/Occupier, TapanMultiventures (Automobile Division) Plot No. 14, 16 and 40-47, Industrial Area Shoghi, District Shimla, HP without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, to what relief of re-instatement, compensation and other service benefits the above aggrieved workman is entitled to from the above employer/management ?"**

As per reference received from the appropriate government, the petitioner has alleged histermination of services by the respondent w.e.f. 11.6.2014 to be illegal and unjustified but the petitioner has failed to file the claim petition and to lead evidence which could go to show that he was illegally terminated by the respondent. Hence, in the absence of any claim petition/ evidence on record, the reference is answered against the petitioner. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
22.6.2016.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

ब अदालत श्री सुरेश पटियाल, सहायक समाहर्ता प्रथम श्रेणी, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0

मिसल नं0 : 18 / 2016 तारीख दायर : 21–3–2016

उनवानः–बवीता पुत्री श्री दलीप सिंह, गांव व डा0 बारीं, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0।

बनाम

आम जनता

विषयः–प्रार्थना–पत्र बराये दर्ज करने जन्म पैदाईश अन्तर्गत धारा 13(3) अधिनियम 1969.

प्रार्थिन बवीता पुत्री श्री दलीप सिंह, गांव व डा0 बारीं, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0 ने इस कार्यालय में प्रार्थना–पत्र इस आशय से पेश किया है कि उसकी जन्म पैदाईश 06–11–1983 को गांव बारीं में हुई है परन्तु उसके जन्म का पंजीकरण स्थानीय ग्राम पंचायत बारीं में दर्ज नहीं हुआ है। जिसे प्रार्थी ग्राम पंचायत के दर्ज रिकार्ड में जन्म पैदाईश में दर्ज करवाना चाहती है।

अतः इश्तहार राजपत्र के माध्यम से आम जनता को सूचित किया जाता है कि उपरोक्त जन्म पैदाईश के बारे में किसी को कोई भी उजर / एतराज हो तो वह दिनांक 12–08–2016 को सुबह 11.00 बजे असालतन / वकालतन हाजिर अदालत आकर अपना उजर / एतराज पेश कर सकते हैं। आम जनता की ओर से कोई हाजिर न होने की कारण आम जनता के खिलाफ एक तरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 12–07–2016 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी,
बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0।

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ब अदालत श्री सुरेश पटियाल, सहायक समाहर्ता प्रथम श्रेणी, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0

मिसल नं0 : 16 / 2016 तारीख दायर : 20–5–2016

उनवानः–श्रीमती विद्या देवी पत्नी स्व0 श्री करतार सिंह, गांव भमनोह, डा0 बगबाडा, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0।

बनाम

आम जनता

विषयः–प्रार्थना–पत्र बराये दर्ज करने मृत्यु अन्तर्गत धारा 13(3) अधिनियम 1969.

प्रार्थिन श्रीमती विद्या देवी पत्नी स्व0 श्री करतार सिंह, गांव भमनोह, डा0 बगबाडा, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0 ने इस कार्यालय में प्रार्थना–पत्र इस आशय से पेश किया है कि उसके पति की मृत्यु दिनांक 23–04–2002 को हो चुकी है परन्तु उसकी मृत्यु का पंजीकरण स्थानीय ग्राम पंचायत दाडीं में दर्ज नहीं हुआ है। जिसे प्रार्थिन ग्राम पंचायत के रिकार्ड में मृत्यु दर्ज करवाना चाहती है।

अतः इश्तहार राजपत्र के माध्यम से आम जनता को सूचित किया जाता है कि उपरोक्त मृत्यु के बारे में किसी को कोई भी उजर / एतराज हो तो वह दिनांक 12–08–2016 को सुबह 11.00 बजे असालतन / वकालतन हाजिर अदालत आकर अपना उजर / एतराज पेश कर सकते हैं। आम जनता की ओर से कोई हाजिर न होने की कारण आम जनता के खिलाफ एक तरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 12–07–2016 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी,
बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0।

ब अदालत श्री सुरेश पटियाल, सहायक समाहर्ता प्रथम श्रेणी, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0

मिसल नं0 : 17/2016 तारीख दायर : 15–6–2016

उनवानः–श्रीमती निशि ठाकुर पुत्री श्री सुख राम, गांव महाडे, डा0 बारीं, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0।

बनाम

आम जनता

विषयः–प्रार्थना–पत्र बराये दर्ज करने जन्म पैदाईश अन्तर्गत धारा 13(3) अधिनियम 1969.

प्रार्थिन श्रीमती निशि ठाकुर पुत्री श्री सुख राम, गांव महाडे, डा0 बारीं, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0 ने इस कार्यालय में प्रार्थना–पत्र इस आशय से पेश किया है कि उसकी जन्म पैदाईश 15–10–1964 को गांव महाडे में हुई है परन्तु उसके जन्म का पंजीकरण स्थानीय ग्राम पंचायत बारीं में दर्ज नहीं हुआ है। जिसे प्रार्थी ग्राम पंचायत के दर्ज रिकार्ड में जन्म पैदाईश में दर्ज करवाना चाहती है।

अतः इश्तहार राजपत्र के माध्यम से आम जनता को सूचित किया जाता है कि उपरोक्त जन्म पैदाईश के बारे में किसी को कोई भी उजर/एतराज हो तो वह दिनांक 12–08–2016 को सुबह 11.00 बजे असालतन/वकालतन हाजिर अदालत आकर अपना उजर/एतराज पेश कर सकते हैं। आम जनता की ओर से कोई हाजिर न होने की कारण आम जनता के खिलाफ एक तरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 12–07–2016 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर। हस्ताक्षरित/–
सहायक समाहर्ता प्रथम श्रेणी,
बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0।

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ब अदालत श्री सुरेश पटियाल, सहायक समाहर्ता प्रथम श्रेणी, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0

मिसल नं0 : ..... तारीख दायर : .....

उनवानः–श्री रघुवीर सिंह डोगरा पुत्र श्री हरि सिंह डोगरा, गांव तियाण, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0।

बनाम

आम जनता

विषयः–प्रार्थना–पत्र बराये दर्ज करने जन्म पैदाईश अन्तर्गत धारा 13(3) अधिनियम 1969.

प्रार्थी श्री रघुवीर सिंह डोगरा पुत्र श्री हरि सिंह डोगरा, गांव तियाण, डा0 लगदेवी, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0 ने इस कार्यालय में प्रार्थना–पत्र इस आशय से पेश किया है कि उसकी पुत्री पुजा डोगरा की जन्म पैदाईश 27–02–1984 की है परन्तु उसके जन्म का पंजीकरण स्थानीय ग्राम पंचायत उहल में दर्ज नहीं हुआ है। जिसे प्रार्थी ग्राम पंचायत के दर्ज रिकार्ड में जन्म पैदाईश में दर्ज करवाना चाहता है।

अतः इश्तहार राजपत्र के माध्यम से आम जनता को सूचित किया जाता है कि उपरोक्त जन्म पैदाईश के बारे में किसी को कोई भी उजर / एतराज हो तो वह दिनांक 16–08–2016 को सुबह 11.00 बजे असालतन / वकालतन हाजिर अदालत आकर अपना उजर / एतराज पेश कर सकते हैं। आम जनता की ओर से कोई हाजिर न होने के कारण आम जनता के खिलाफ एक तरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 16–07–2016 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी,
बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0।

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ब अदालत श्री सुरेश पटियाल, सहायक समाहर्ता प्रथम श्रेणी, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0

मिसल नं0 : ..... तारीख दायर : .....

उनवानः–श्री रघुवीर सिंह डोगरा पुत्र श्री हरि सिंह डोगरा, गांव तियाण, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0।

बनाम

आम जनता

विषयः–प्रार्थना–पत्र बराये दर्ज करने जन्म पैदाईश अन्तर्गत धारा 13(3) अधिनियम 1969.

प्रार्थी श्री रघुवीर सिंह डोगरा पुत्र श्री हरि सिंह डोगरा, गांव तियाण, डा0 लगदेवी, तहसील बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0 ने इस कार्यालय में प्रार्थना–पत्र इस आशय से पेश किया है कि उसकी पुत्री आरती डोगरा की जन्म पैदाईश 27–02–1984 की है परन्तु उसके जन्म का पंजीकरण स्थानीय ग्राम पंचायत उहल में दर्ज नहीं हुआ है। जिसे प्रार्थी ग्राम पंचायत के दर्ज रिकार्ड में जन्म पैदाईश में दर्ज करवाना चाहता है।

अतः इश्तहार राजपत्र के माध्यम से आम जनता को सूचित किया जाता है कि उपरोक्त जन्म पैदाईश के बारे में किसी को कोई भी उजर / एतराज हो तो वह दिनांक 16–08–2016 को सुबह 11.00 बजे असालतन / वकालतन हाजिर अदालत आकर अपना उजर / एतराज पेश कर सकते हैं। आम जनता की ओर से कोई हाजिर न होने के कारण आम जनता के खिलाफ एक तरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 16–07–2016 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर। हस्ताक्षरित/–
सहायक समाहर्ता प्रथम श्रेणी,
बमसन स्थित टौणी देवी, जिला हमीरपुर, हि0 प्र0।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्रीमती Lhamo Dolma w/o Late Shri Khaggan, r/o 95. T.C.S. Bhuppur, तहसील पांवटा साहिब, जिला सिरमौर .. वादिया।

बनाम

आम जनता .. प्रतिवादी।

प्रकरण संख्या : 115/16

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती Lhamo Dolma w/o Late Shri khaggan, r/o 95. T.C.S. भूपपुर, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदिका किन्हीं कारणों से अपने पुत्र Tsering Choemphel की मृत्यु तिथि 04–04–09 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाई है। इस बारे आवेदिका द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ–पत्र भी आवेदिका ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदिका ने ग्राम पंचायत भाटांवाली में अपने ऊपर वर्णित पुत्र Tsering Choemphel की मृत्यु तिथि 04–04–09 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को श्री Tsering Choemphel की मृत्यु तिथि ग्राम पंचायत भाटांवाली, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 16–08–2016 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त श्री Tsering Choemphel की मृत्यु तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 13–07–16 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्रीमती Lhamo Dolma w/o Late Shri Khaggan, r/o 95. T.C.S. Bhuppur, तहसील पांवटा साहिब, जिला सिरमौर .. वादिया।

बनाम

आम जनता .. प्रतिवादी।

प्रकरण संख्या : 116 / 16

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती Lhamo Dolma w/o Late Shri Khaggan, r/o 95. T.C.S. Bhuppur, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदिका किन्हीं कारणों से अपने पति Shri Khaggan की मृत्यु तिथि 15–05–2003 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाई है। इस बारे आवेदिका द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ–पत्र भी आवेदिका ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदिका ने ग्राम पंचायत भाटांवाली में अपने ऊपर वर्णित पति Shri Khaggan की मृत्यु तिथि 15–05–2003 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Shri Khaggan की मृत्यु तिथि ग्राम पंचायत भाटांवाली, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 16–08–16 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त Shri Khaggan की मृत्यु तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार मृत्यु तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 13–07–16 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्रीमती बिमला देवी पुत्री श्री लच्छमण, पत्नी श्री तेहत्तर सिंह, निवासी बेहड़ेवाला, तहसील पांवटा साहिब, जिला सिरमौर .. वादिया।

बनाम

आम जनता .. प्रतिवादी।

प्रकरण संख्या : 111 / 16

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती बिमला देवी पुत्री श्री लच्छमण पत्नी श्री तेहत्तर सिंह, निवासी बेहड़ेवाला, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि किन्हीं कारणों से उसकी जन्म तिथि 15–07–62 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाई है। इस बारे आवेदिका द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ–पत्र भी आवेदिका ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदिका ने ग्राम पंचायत अमरकोट में अपनी जन्म तिथि 15–07–62 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को श्रीमती बिमला देवी की जन्म तिथि ग्राम पंचायत अमरकोट, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 16–08–16 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त श्रीमती बिमला देवी की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 12–07–16 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्रीमती गुरमीत कौर पुत्री श्री परमजीत सिंह, निवासी अमरगढ़ पुरूवाला, तहसील पांवटा साहिब, जिला सिरमौर ·· वादिया।

बनाम

आम जनता ·· प्रतिवादी।

प्रकरण संख्या : 113/16

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती गुरमीत कौर पुत्री श्री परमजीत सिंह, निवासी अमरगढ़ पुरूवाला, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि किन्हीं कारणों से उसकी जन्म तिथि 21–03–87 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाई है। इस बारे आवेदिका द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ–पत्र भी आवेदिका ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदिका ने ग्राम पंचायत पुरूवाला कांशीपुर में अपनी जन्म तिथि 21–03–87 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को श्रीमती गुरमीत कौर की जन्म तिथि ग्राम पंचायत पुरूवाला कांशीपुर, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 16–08–16 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त श्रीमती गुरमीत कौर की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 12–07–16 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्री रमेश बहुगुणा पुत्र श्री बृजदेव, निवासी 169 / 4, वार्ड नं0 4, पांवटा साहिब, तहसील पांवटा साहिब, जिला सिरमौर .. वादी।

बनाम

आम जनता .. प्रतिवादी।

प्रकरण संख्या : 117 / 16

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री रमेश बहुगुणा पुत्र श्री बृजदेव, निवासी 169 / 4, वार्ड नं0 4, पांवटा साहिब, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपनी पुत्री मेघा बहुगुणा की जन्म तिथि 03–09–95 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ–पत्र भी आवेदक ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत कमरऊ में अपनी ऊपर वर्णित पुत्री की जन्म तिथि 03–09–95 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को मेघा बहुगुणा की जन्म तिथि ग्राम पंचायत कमरऊ, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 16–08–16 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त मेघा बहुगुणा की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 13–07–16 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्री अभिषेक सैनी पुत्र श्री संगत सिंह, निवासी तारूवाला, तहसील पांवटा साहिब, जिला सिरमौर .. वादी।

बनाम

आम जनता .. प्रतिवादी।

प्रकरण संख्या : 110 / 16

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री अभिषेक सैनी पुत्र श्री संगत सिंह, निवासी तारूवाला, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि किन्हीं कारणों से उसकी जन्म तिथि 15–10–90 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ–पत्र भी आवेदक ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत बद्रीपुर में अपनी जन्म तिथि 15–10–90 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को अभिषेक सैनी की जन्म तिथि ग्राम पंचायत बद्रीपुर, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 16–08–16 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त अभिषेक सैनी की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 12–07–16 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्रीमती Migmar Dolma पत्नी स्व0 श्री Ondu, निवासी 102-T.C.S. भूपपुर, तहसील पांवटा साहिब, जिला सिरमौर .. वादिया।

बनाम

आम जनता .. प्रतिवादी।

प्रकरण संख्या : 114/16

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती Migmar Dolma पत्नी स्व0 श्री Ondu, निवासी 102-T.C.S. भूपपुर, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदिका किन्हीं कारणों से अपने पति श्री Ondu पुत्र Pendun की मृत्यु तिथि 16–10–2002 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाई है। इस बारे आवेदिका द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ–पत्र भी आवेदिका ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदिका ने ग्राम पंचायत भाटांवाली में अपने पति Ondu की मृत्यु तिथि 16–10–2002 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को स्व0 श्री Ondu की मृत्यु तिथि ग्राम पंचायत भाटांवाली, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 16–08–16 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त स्व0 श्री Ondu की मृत्यु तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार मृत्यु तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 13–07–16 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्री मदन लाल पुत्र श्री सिरी राम, निवासी ग्राम अजौली, तहसील पांवटा साहिब, जिला सिरमौर ·· वादी।

बनाम

आम जनता ·· प्रतिवादी।

प्रकरण संख्या : 112 / 16

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री मदन लाल पुत्र श्री सिरी राम, निवासी ग्राम अजौली, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपने पुत्र सुनील कुमार की जन्म तिथि 09–03–91 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ–पत्र भी आवेदक ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत अजौली में अपने ऊपर वर्णित पुत्र की जन्म तिथि 09–03–91 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को सुनील कुमार की जन्म तिथि ग्राम पंचायत अजौली, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 16–08–16 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त सुनील कुमार की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 12–07–16 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है